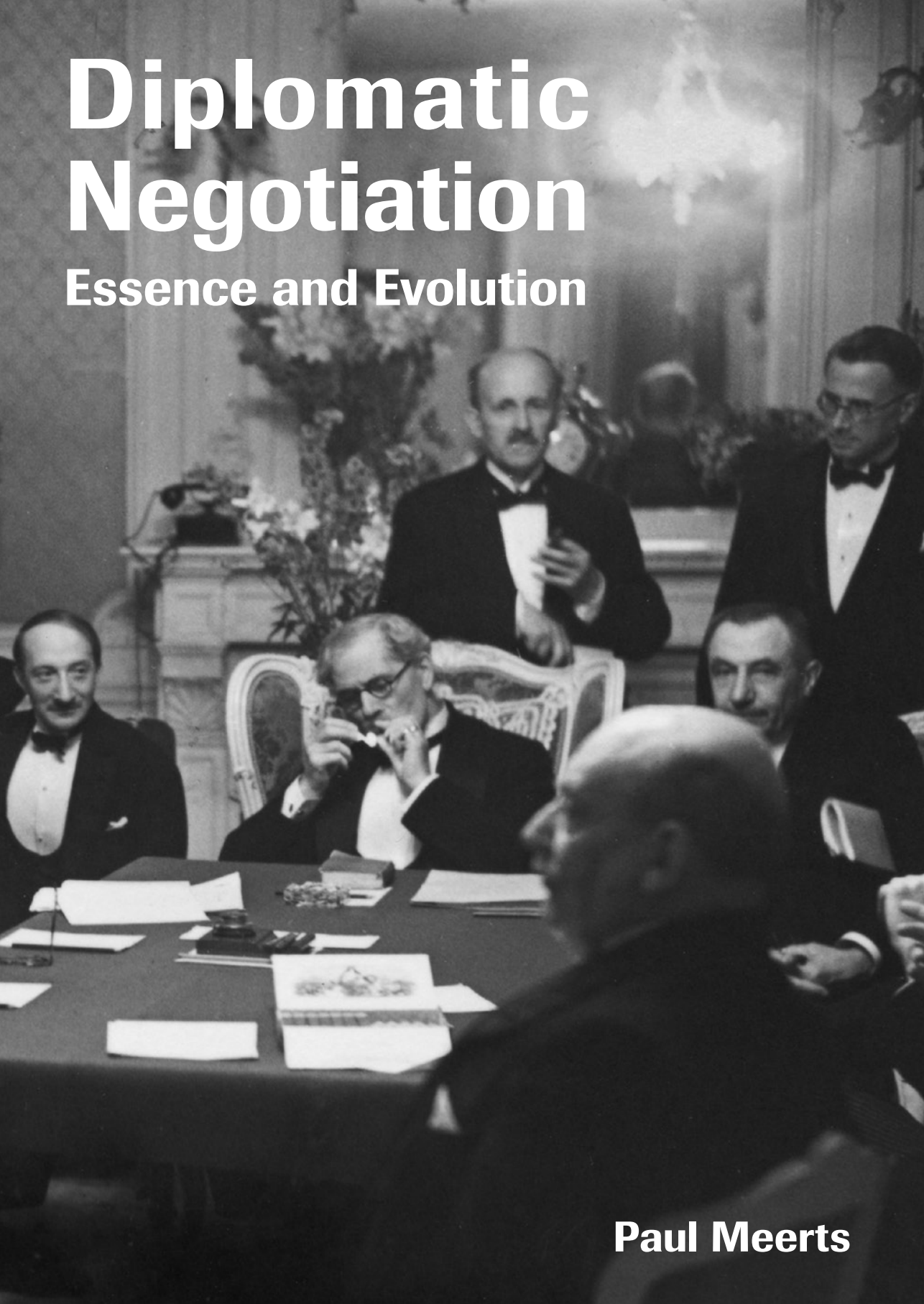
Diplomatic Negotiation

Essence and Evolution



Paul Meerts

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Paul Meerts

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Cover: Picture of the secret final negotiations on the German First World War reparations in the room of British Prime Minister Ramsay MacDonald in the Hôtel Beau-Rivage (Lausanne, 1932), taken by Dr. Erich Salomon (Berlin 1886–Auschwitz 1944), inventor of the 'candid camera'. French Prime Minister Briand called him 'le roi des indiscrets'.

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Dedication: To my ancestors, who negotiated for survival,
and to my wife, children and grandchildren who taught me bargaining.

Table of Contents

Preface 11

Chapter I: Introduction and Disquisition 17
- **The architecture of international negotiation** 21
  - Academics and Practitioners 22
  - Parties and Interests 24
  - Process and Power 27
  - Bashing or Bargaining 29
- **Approaches to international negotiation** 31
  - Approaches from 'International Negotiation' 32
  - Approaches from Other Sources 37
- **In Conclusion** 42

PART ONE THE NATURE OF DIPLOMATIC NEGOTIATION: 45

Chapter II: Aspects of Diplomatic Negotiation 47
- **The development of diplomatic negotiation** 50
  - The Problem of Establishing Outcomes 53
  - Changes over the Centuries 55
- **Characteristics of diplomatic negotiation** 57
  - Conflict of Interest and Power Relationships 59
  - Inter-state Negotiations 61
  - The Diplomat and Negotiation Behaviour 63
- **In Conclusion** 65

Chapter III: Process and Context 67
- **Boundaries in bargaining** 71
  - Geography: Bargaining Borders 72
  - Systems as Boundaries in Bargaining Processes 74
  - Needs: the role of interests and positions 75
  - Resources: Human, Immaterial and Material 76
  - Regulators: Law, Procedures, and Diplomatic Norms and Values 77
  - The Time Factor 79
- **Order through organization** 80
  - Regimes 80
  - Regimes and Negotiations 82
  - Shifts in Multilateralism 84
  - Coping with Challenges 85
  - Possible Future Developments 87
- **In Conclusion** 88

Chapter IV: Entrapment in Negotiation **91**
Characteristics: *Choice, Uncertainty, Investment, Repetition* 94
Levels: *Intrapersonal, Interpersonal, National, International* 101
Factors: *Planning, Information, Communication, Control* 106
Case Study: *Four lessons* 110
In Conclusion 113

Chapter V: Negotiation and Warfare **115**
The utility of War and Words 118
Historical Background 119
Commonalities 121
Divergences 125
Synergies 127
Mediation 130
In Conclusion 133

PART TWO THE CONDUCT OF DIPLOMATIC NEGOTIATION: 137

Chapter VI: The Seventeenth Century: Forward- and Backward-Looking Outcomes **139**
Parties and Positions 143
Procedures and Processes 148
People and Posture 151
Prevention and Prospectiveness 157
In Conclusion 161

Chapter VII: The Eighteenth Century: Behaviour of Negotiators **163**
What was it about? 165
The Political Context 167
Pre-negotiations 169
Negotiations 170
Negotiators 172
Other Congresses on Dutch Soil 174
The Peace of Utrecht in a Broader Perspective 175
Past and Present: The Effective Negotiator 178
In Conclusion 180

Chapter VIII: The Nineteenth Century: Inclusiveness and Exclusiveness **183**
Choice 187
Context 190
Counterparts 193
Structure 199
Conversations 202
Convergence 206
In Conclusion 212

Chapter IX: The Twentieth Century: Reputation and 'Egotiation' 217
Closure of the First World War 222
The Outer Ring 223
The Inner Ring 224
Opening and Closure of the Second World War 228
Munich, 1938 229
Yalta, 1945 232
During the Cold War 234
Vienna, 1961 234
Beijing and Moscow, 1972 236
Geneva, 1985 239
In Conclusion 240

Chapter X: The Twenty-First Century: Structure and Negotiation 243
Uniqueness and Strength of the Organization 246
The Role of the Negotiation Process 247
Characteristics of the EU as a Negotiations Arena 249
Member States in the EU Negotiation Process 252
Procedures of the EU Negotiation Process 254
Institutions in the EU Negotiation Process 254
The Presidency in the EU Negotiation Process 256
The European Council in the EU Negotiation Process 257
The Council of Ministers in the EU Negotiation Process 258
The European Parliament in the EU Negotiation Process 259
The Commission as the Initiator, Implementer and Broker 260
EU Enlargement and External Negotiations 261
Strategies and Tactics in EU Negotiation Processes 263
The Future of the EU Negotiation Process 265
In Conclusion 268

Chapter XI: Simulating Diplomatic Negotiation 271
Unilateral lessons for chairing 274
Chairing in the European Union 276
Effective Chairing 278
Bilateral lessons for practice 281
The Nature of Negotiation in an OSI Context 283
Training for On-site Inspection Negotiations 287
CTBTO Table-Top Exercises: What Are They About? 289
CTBTO Table-Top Exercises: What Happened and Why? 291
Multilateral lessons for practice 295
Substance 296
Rules of the game 298
Processes and Outcomes 300
Comparable Games 302
In Conclusion 303

Chapter XII: Summary and Conclusions **307**
The Nature of Diplomatic Negotiation 311
The Conduct of Diplomatic Negotiation 315
Cross-Cutting Findings 321
Actors 323
Factors 324
Process 326
Control 326
Recommendations 328

Samenvatting **331**

Bibliography **341**

Glossary **367**

Acknowledgements **371**

Curriculum Vitae **375**

Index **379**

Preface

This treatise is a study on international diplomatic negotiation processes and their context. Diplomatic negotiation processes are vital instruments in international relations between countries and in international organizations. In article 33.1 of Chapter VI of the Charter of the United Nations, concerning the 'Pacific Settlement of Disputes', negotiation is mentioned as the first instrument of seven methods to be used in cases of conflict: 'The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice' (https://treaties.un.org/doc/publication). Furthermore, in its 83rd plenary meeting on 8 December 1998, the United Nations General Assembly adopted Resolution 53/101 on 'Principles and Guidelines for International Negotiations' (www.refworld.org/docid/3b00f5254a.html). In the preamble, it stresses 'the important role constructive and effective negotiations can play in attaining the purposes of the Charter by contributing to the management of international relations'. The resolution provides principles and guidelines, hoping that these will 'contribute to enhancing the predictability of negotiating parties, reducing uncertainty and promoting an atmosphere of trust at negotiations'. In its second operative paragraph, it '*Affirms* the importance of conducting negotiations in accordance with international law in a manner compatible with and conducive to the achievement of the stated objective of negotiations'.

The name 'diplomatic' is perhaps not completely accurate – inter-state or 'inter-nation' might be more precise – but it seems to make good sense to use 'diplomatic' as the term commonly understood for international negotiations in the public sector, playing a pivotal role in peaceful conflict resolution. After all, it had already been said in 1716 (Callières, 1983: 70) that 'States reap so many advantages from continual negotiations, when they are managed with prudence, that it is not possible to believe it, where one does not know it by experience'. This book will use the term *international negotiation* in the sense of *diplomatic negotiation* – that is, inter-state negotiation processes between sovereign states in and outside international organizations, being tied to the intra-state processes in which the national positions are determined. As the term 'international negotiation' is the most common terminology to be used by those who deal with diplomatic negotiation processes, the two terms will be used interchangeably. This book defines diplomatic negotiation as an *exchange of concessions and compensations in a framework of international order accepted by sovereign entities.* Such a peaceful process will only be successful if there is enough common ground between the adversaries. Effective diplomatic negotiators will diagnose – and if needed create – this common space.

This treatise has been written in the tradition of Clingendael Institute's PIN program, and after two decades at the International Institute of Applied Systems Analysis (IIASA) in Laxenburg. According to the PIN tradition, there is no one-way street on negotiation. There are, of course, books – often originating in North America – that are a great help

to those who want to negotiate successfully. Indeed, these books are a useful tool for the international negotiator, but they are one-sided as they tend to explain negotiation through inclusive models, thereby excluding other approaches. This is not a problem in itself, but they are not very helpful in academia. According to members of the PIN group (and this was also my own view long before entering this circle), negotiation is multi-faceted, situational and contextual. An effective strategy can be disastrous under different circumstances. There is not one truth, and even if we find certain trends to be true, there are always exceptions. As a trainer in international negotiation processes, I often use the 'water metaphor' that I once found by chance in trying to explain the fluidity of negotiation and the need to channel it in a certain direction: without a glass, water cannot be drunk and used effectively; spilling it over my hand is of no help. (As a side note, the glass is there for the water and not the other way around.) International institutions, themselves created through the process of inter-state negotiation, serve the process whereby we need to solve problems by peaceful means as an alternative to warfare. Without the riverbed, the water will not reach its end stage – the sea – in an effective way.

This line of reasoning has many consequences and poses difficult questions to those who study international negotiation processes. After all, if negotiation is determined by its own fluidity and environment, how can we understand it? Even more so, how do we gain a better insight by applying academic techniques, norms and values? We expect 'negotiationologists' – those who want to understand negotiation through an academic lens – to tell us about the processes and their structures in a scientific way, as objectively as possible, but they themselves are the subject of their environment. Academics are influenced by their own background and experience just as much as practitioners. As a constituent part of their culture, academics will – often unconsciously – be biased. The approach of an American or European, African or Asian academic will be different, and even these categories are not homogeneous. As in any social science, there is the problem of objective measurement and although, for example, game theory did contribute enormously to the understanding of negotiation as such, it cannot explain all facets of the process and the structure. The nucleus of negotiation cannot be grabbed in a quantitative way, only in a qualitative manner, but the latter approach is open to subjective influences. The 'solution' is therefore to look at negotiation processes from many different angles, hoping to gain some grip on this phenomenon without becoming too subjective and therefore non-academic. We need the academic approach to get a systematic understanding of the issue. It is the only viable tool that we have, but it is far from perfect under the circumstances of processes being influenced by zillions of variables, including those of human nature.

International negotiation can be part of any social science, but in this book it is an integral element of the political science-oriented study of international relations. It is only in recent decades that the discipline of international relations really matured and that academics noticed that negotiation might be part and parcel of this branch of the social sciences. Notwithstanding the fact that thousands of books and articles have been devoted during these decades to international negotiation processes and their impact on international relations and thereby on diplomacy, not only in the world of today but also in bygone centuries, this should not come as a surprise. Negotiation has been the most important tool of diplomacy, and diplomacy itself has been a subject of non-academic

study for a long time, but systematic attention to international negotiation processes only started to surface in the last 50 years, with a sprint during the last two decades. The focus of international relations as an academic field has been on war, and only rather lately on peaceful conflict resolution. As far as negotiation as a tool in conflict resolution is concerned, this lack of interest can be explained by the relative inadequacy of negotiation processes in managing conflicts and crises. Being unprotected by strong international regimes and institutions, negotiation was a feeble tool, often overshadowed by the use of force instead of words. With the growth of international regimes, negotiation became an increasingly viable tool in international relations and slowly gained the academic attention that it deserves. After all, if negotiation works well, it is a much more cost-effective instrument than warfare. Furthermore, as war becomes more costly, there is an even greater need to facilitate negotiation processes as its alternative.

In the Netherlands, the study of international negotiation – let alone diplomatic negotiation – is an undervalued academic field of research and training in international relations, notwithstanding the valuable work of the Dutch scholars I met before, during and after the first PIN-conference at IIASA 1989. This work hopes to add to the body of knowledge collected by these scholars in providing a better understanding and higher appreciation of international/diplomatic negotiation processes as a constituent part of the study of international relations. For diplomats and civil servants, just to remain in the public domain, negotiation is the way to go from conflict to conflict settlement: to merge diverging interests into a common solution in the interests of all parties involved. This is, of course, an ideal-type approach to the negotiation process and this treatise will illustrate the obstacles and limitations that will often undermine the effectiveness of the negotiation process, to the detriment of the parties involved. Worse, conditions might not create the ripeness needed for the process to start, or to come to any kind of closure. A change of context will thus often be a prerequisite for meaningful international and national negotiation. The question of how to change the context in such a way that negotiability will be created is not an issue that this book seeks to address, although some attention will be paid to it. The process of negotiation is already complex enough to be tackled, and this will be done from different angles. This is a question of choice, as the number of approaches is as numerous as the perceptions about the definition, nature and the essence of the negotiation processes between sovereign states and in international organizations. Nevertheless, this treatise hopes to spark interest and deepen insight in inter-state negotiation and its value for the global community. It attempts to show the contours of international negotiation as a construction supporting international relations and the processes within them – a socio-political construct with many architects, and indeed a structure of its own within international reality.

This study is titled 'Diplomatic Negotiation: Essence and Evolution', as it claims to be a monograph on the peaceful management of common and opposing interests and values of sovereign states through the process of give and take. *The treatise aims to enhance understanding of the significance and the evolution of negotiation as a tool in international relations*. The focus is on the conditions that account for the effectiveness of diplomatic negotiation. What are the obstacles and limitations, on the one hand, and what are the opportunities and factors conducive to its success, on the other? As for the research method being employed in this study, the tool that was used may be labelled

multifaceted qualitative analysis: approaching and discussing diplomatic negotiation from different angles and by looking at cases in different centuries on the basis of a wide body of cross-national literature, discussions in conferences and in the Processes of International Negotiation Program in the last fifteen years, as well as experiences in training and lecturing university students and negotiation practitioners on four continents during the past 30 years.

Apart from the introduction and conclusion, the study consists of two parts, one with four and one with six chapters. The first part is on the body of diplomatic negotiation, labelled as its 'nature'. The second part is about how diplomatic negotiation processes have been handled during the past 400 years, labelled as its 'conduct'. The reason for subtitling this treatise as 'Essence and Evolution' instead of 'Nature and Conduct' arises from the fact that the notion of evolution is dealt with in the first part of the book, while not all cases are evolutionary. The last case, on simulation, discusses the process of negotiation as a mirror of reality, but it is not about the development of diplomatic negotiation over the centuries. Furthermore, each of the historical cases has a different angle, and thereby analyzes both the aspects of essence and evolution. Part II on 'conduct' starts with the Peace of Westphalia as the most important diplomatic conference in history, and continues to discuss the most relevant conferences in each of the following centuries, or at least a selection of them, showing their significance for their time and age. By studying these conferences, it is hoped to clarify the role of regimes in the evolution of diplomatic negotiation, as this treatise sees regimes and their different modes as a basic reason for its growing effectiveness and importance. Part I on 'nature' discusses the most important phenomena in diplomatic negotiation, which will return in Part II of this study.

The difference between this study and the existing literature is its combination of broad contextual and comparative approaches to topics through time, focusing on the diplomatic dimension of international negotiation processes. The treatise sees negotiation as a *situational phenomenon* and therefore avoids 'modelling' it, as no model can encapsulate all psychological, procedural and positional factors determining the flow and the outcome of diplomatic negotiation processes. Negotiation is as old as mankind, but this study wants to clarify why this method of conflict management and resolution became more valuable over the centuries. *The basic proposition of this book is that substantial negotiation processes between sovereign states can only be really effective if distrust can be compensated by control through international regimes.* Trust has always been a problem in negotiation. Although people can create trust between them, states need guarantees for the implementation of the contracts between them, otherwise negotiation would be a flat instrument in international relations. Diplomacy is in need of negotiation as an instrument to substantiate its own effectiveness.

This treatise is hence a collection of papers interconnected in such a way that some kind of edifice can be presented to the reader, not just an ensemble of unrelated buildings. Two-thirds of the content of this treatise was published and peer reviewed before 2012, but all of these texts have been thoroughly updated and revised, with some partially rewritten or completely restructured. Most of chapters II, III, IV, VI and VII, as well as substantial parts of chapters I, V, X and XI, were published before this study was started in 2012. Most of chapters VIII, IX and XII, as well as substantial parts of chapters I, V, X and XI, were written specifically for this treatise. They have in the meantime been pre-published in an

abridged and restructured mode. A detailed account of the sources and the underlying publications can be found in the footnote at the start of each chapter, with full reference to the Bibliography.

Chapter I introduces the phenomenon of international negotiation, of which diplomatic negotiation is part and parcel. The chapter studies the architecture of international negotiations and provides an overview of approaches by some of the important scholars in the field. As already mentioned, the first part of this treatise – on 'The Nature of Diplomatic Negotiation' – analyzes important aspects of the negotiation processes between states, be they outside or inside international organizations. The focus on states has been chosen because of their predominance in international relations, notwithstanding the role played by other actors like supranational, intergovernmental and public and private non-governmental organizations that do not have sovereignty. As John Odell observes, 'Negotiation between states remains one of the most central recurring processes of international relations' (Odell, 2009: 273). Likewise, Alisher Faizullaev holds that 'states remain the main actors of international diplomacy. States, not organizations or individuals, establish diplomatic relations' (Faizullaev, 2014: 279). This treatise deals with the problem of what one might describe as 'organized international anarchy': cooperation between almost completely independent entities in an interdependent world, which distinguishes diplomatic negotiation from other negotiation processes. The notion of 'organized international anarchy' is quite similar to the concept of 'international society' as elaborated by Hedley Bull in his seminal book *The Anarchical Society: A Study of World Order in World Politics* (Bull, 1977). In Bull's view, diplomatic negotiation is one of the institutions creating a modicum of order in the states' system. Furthermore, in view of its focus on diplomatic negotiation rather than on other forms of negotiation, it suited this study well that states were actually already on the international scene at the time of the negotiations in Westphalia, as demonstrated in the first case study. The Treaty – or rather the Treaties – of Westphalia can be regarded as a kind of proto-regional regime, but not as the birth of the first international organization, which appeared only in the twentieth century (Meerts, 2014c). Chapter II gives a short overview of the development of diplomatic negotiation over the centuries and its character. Chapter III looks at the connection between the process of diplomatic negotiation and its context. Chapter IV deals with entrapment as a special kind of process that is heavily influenced by contextual issues. Chapter V analyzes the connection and disconnection between diplomatic negotiation and warfare, which are two sides of the same coin, being the main – but very different – tools of conflict management and resolution.

As stated above, the second part of this book, 'The Conduct of Diplomatic Negotiation', consists of case studies of diplomatic negotiation. The cases will be studied from different perspectives. Chapter VI, on the seventeenth century, looks at the Münster negotiations as a process dealing with the past and structuring the future in a predominantly positive way. Chapter VII studies the behaviour of diplomatic negotiators during the Utrecht Peace Negotiations in the early eighteenth century. It compares their behaviour with negotiation behaviour 40 years earlier, as well as with the behaviour of diplomatic negotiators 300 years later. Chapter VIII asks questions about the effect of including and excluding parties and people from the negotiation process during the Vienna Peace Conference in the early nineteenth century. Chapter IX studies the impact of the reputation and the ego of the

diplomatic and the political negotiators on six negotiation processes around and during warm and cold wars in the twentieth century: at the end of the First World War; before and after the Second World War; and during the Cold War. Chapter X observes the European Union as a negotiation process within a relatively strong framework, constituting the most solid context for diplomatic negotiation in human history so far. Chapter XI does not look at the historical, but instead the simulated dimension of diplomatic negotiation. After the chapters on the conduct of diplomatic negotiation, chapter XII draws final conclusions from the preceding chapters.

The picture on the cover (de Vries and Hunter, 1963: 86–89) is by Dr. Erich Salomon (whose father came from Berlin and mother from Rotterdam), a mechanic/lawyer/journalist with great insight into people, politics and history, who invented his own technical means allowing him to take clandestine pictures. Both photographs were taken at the end of the Lausanne Conference on German First World War reparations in 1932. They have been chosen as showing the intensity of diplomatic negotiation and 'picture' in a way the content of this treatise. The negotiators were unaware of the presence of Dr. Salomon, who can be regarded as the father of the candid camera. French Prime Minister Briand called him '*le roi des indiscrets*' and another minister remarked that '(nowadays) conferences can be held without ministers, but not without Dr. Salomon' (de Vries and Hunter, 1963: 223 and v). The photographs figured in the main lecture hall of Clingendael Institute and inspired participants from the course for top-level defence management to simulate it: they had a picture made – of themselves – posing as Belgian, Italian, German, French and British diplomatic negotiators.

CHAPTER I

Introduction and Disquisition

CHAPTER I: INTRODUCTION AND DISQUISITION

International – and thereby diplomatic – negotiation processes can only be well understood by approaching them from as many different angles as possible. This introductory chapter first discusses the essence and architecture of international negotiation, and then some approaches from negotiation literature. The student of international negotiation will find remarkable resemblances between them. The majority of negotiation scholars and practitioners are analyzing baskets of different inroads to the negotiation processes and all these inroads look alike. The difference is their emphasis: many authors take the process and its phases as a starting point; others focus first on different factors influencing these processes; while some will take the actors in the process as their point of departure. Whatever their main focal point is, however, the vast majority of the 'negotiationologists' will deal with the same elements in the end. For the processes, these will be diagnosing, exploring, selecting, deciding and implementing. The main factors analyzed are the political and diplomatic context of the negotiation, the nature of and the distance between positions and interests, the strategies and tactics employed, the impact of power and influence, as well as the shadow of the past and the future. For actors, the authors deal with parties such as states and international organizations and their structure, the people representing them and the delegations they are managing, their character, experience and skill, their societal and professional background, and the question of what extent they are included in or excluded from the negotiation process.

This triangle of 'Actors–Factors–Processes' is of course incomplete and much more complicated in reality. It is but one way to look at all the issues at hand. Another approach would structure by asking questions like why, who, how, when and where? This approach cuts through the construction of actors, factors and processes. The question here is: what are the independent and dependent variables? There is no answer to this, as all elements are dependent on each other and it is up to the authors to choose the starting points, as independent variables. The problem is that different authors take different starting points and there are only subjective ways to separate the independent variables from the dependent. The choice is for pragmatic reasons; there is unfortunately no objective scientific choice. As negotiation is situational, so is the study of it. A one-dimensional approach can be helpful, as long as it is understood as such. We go off-track if we pretend that our approach to negotiation is the one and only truth. This study will therefore not launch a (new) model to analyze and explain the character and conduct of negotiation, but will limit itself to a series of observations and conclusions.

The Preface of this treatise has already defined diplomatic negotiation. Yet what is diplomacy? According to Satow, it 'is the application of intelligence and tact to the conduct of official relations between governments of independent states' (Satow, 1917: ix), while Jönsson and Aggestam try to explain the essence of diplomacy by looking at it from different angles, as will be explained in chapter II of this book (Jönsson and Aggestam,

2009: 33–34). Diplomacy is anyway more than negotiation: 'Diplomacy serves a large variety of functions, and negotiation, albeit important, is only one of them. It is nonetheless true that global society today is generating an increasingly large volume of negotiation, in part the result of complex interdependence' (Leguey-Feilleux, 2009: 5). Diplomacy is a tool in international governance, while negotiation is an instrument in diplomacy, with governance being defined as the ways to manage common affairs in which conflicting or diverse interests may be accommodated (Karns and Mingst, 2010: 3–4).

The definition of diplomatic/international *negotiation* depends on the question of *which definition is most suitable to describe and analyze the process as an explanation of its outcome.* Maxim Kaplan (Kaplan, 2010: 13) found 161 different definitions of negotiation. In 115 of these, *agreement* is the issue that these definitions want to clarify, 71 definitions stress *communication* as the main factor to be analyzed, 64 focus on *conflicting interests*, and another 64 perceive negotiation from the point of view of elements such as *process* and *behaviour* (Kaplan, 2010: 14–15). He sums them up in an annexe (Kaplan, 2010: 351–375). It is neither possible nor useful, however, to refer to a long list of definitions in this treatise. Christer Jönsson and Martin Hall, for example, do not attempt to define diplomatic negotiation at all. They just try to approach its meaning, by saying that 'While negotiating to further the interests of their particular polities, diplomats typically identify the peaceful resolution of conflicts and the avoidance of war as common interests' (Jönsson and Hall, 2005: 82). They stress the fact that diplomats are negotiating as 'agents of a principal with ultimate authority' (Jönsson and Hall, 2005: 84). The same is true for Machiavelli, who limits himself to the observation that the diplomat must, 'if his instructions require it, engage in formal negotiations, and be especially industrious in obtaining information and reporting it home' (Berridge, 1999: 13).

Henry Kissinger views negotiation thus: 'In simple terms, negotiation is a process of combining conflicting positions into a common position, under a decision rule of unanimity, a phenomenon in which the outcome is determined by the process' (Kissinger, 1969: 212). This study comments on his definition by saying that it is not so much a combination of conflicting positions, but of conflicting needs reflected in conflicting positions. Furthermore, the decision rule does not need to be unanimity. Indeed, in most cases the decision-making mechanism is through consensus, meaning that not all parties fully agree. Some abstain as they do not want to veto the (re)solution. It remains an open question whether it is possible to define a process as a negotiation if it does not aim at an outcome, but has been used to delude the opponent, or to postpone or even avoid any outcomes. This book is of the opinion that striving for an outcome is indeed an essential element in most negotiation processes, but it regards a 'smoke-screen' process to be negotiation as well. Although it is undeniably true that fake negotiation processes – as navigated by one or more of the parties involved – are not aiming at an agreement, they still show nearly all the characteristics that adhere to negotiation and are therefore regarded as a negotiation process by this study.

This study, as already stated in the Preface, does not try to determine what negotiation is by capturing it in one or more definitions. It tries to enhance our understanding of the phenomenon by describing and analyzing as many essential elements as possible, thereby limiting itself to negotiations in the diplomatic and political spheres. In that sense, the book hopes to highlight negotiation's role in international relations, and in conflicts or

ongoing international decision-making in particular. In serious conflictual situations, it might be seen as *war by peaceful means*; in continuous decision-making as *the policy of give and take*. Between these two extremes there is a grey area of mixture, where either the one or the other is the predominant mode of processing.

THE ARCHITECTURE OF INTERNATIONAL NEGOTIATION

'Negotiation and conflict management research is thriving, as shown by the success of international conferences, the vast number of research and teaching programs held in an expanding list of countries, and the quantity and quality of articles, books, dissertations, and working papers' (Colson *et al.*, 2013: xi). New scholarly interest in international negotiation processes started after the Second World War (Lewicki *et al.*, 1994: 15–19). Before then, one can point to the work of diplomats like Francesco Guicciardini (1483–1540) (Berridge, 1998), the Archbishop Fénelon (1651–1715) (Koskenniemi, 2011), the Abbé de Saint-Pierre (1658–1743) (Koskenniemi, 2011), the diplomatic negotiator Francois de Callières (Callières, 1983), and at a much later stage Harold Nicolson (Nicolson, 1963), who have said many things worthy of consideration about the phenomenon of negotiations between states. Scientific interest was raised more seriously in the 1960s. Academics like Fred Iklé (Iklé, 1964) and Howard Raiffa (Raiffa, 1982) tried to find patterns in something as intangible as a process. For this purpose various methods were used, from the description of real negotiations to mathematical models in which the factors of the negotiation process were objectified. In that way there was common ground between the authors for whom negotiation did not take a central role, but who had carried out research into facts and factors that played a major role in the negotiation process. It relates, for instance, to the power factor (Zartman and Rubin, 2000), the psychological factor (Rubin, 1991), and the game theoretical aspects (Axelrod, 1984).

Negotiation is 'just' one way – although if it can be applied, it is very cost-effective – to create and enhance peace, security and justice. This is especially true if the circumstances help to foster sustainability. 'Negotiators who respect Procedural Justice principles are more likely to produce agreements based on equality, and such agreements are more durable' (Albin *et al.*, 2012: 23). Other tools can be facilitation, mediation, arbitration, adjudication and warfare, etc. This study limits itself to inter-state negotiation, asking questions about negotiation's nature and utility, and relating it on its fringes to warfare and adjudication. Negotiation can be used to avoid wars, and it is nearly always used after wars are over. Negotiation can be used to avoid adjudication, but it is always used to give rise to adjudication. This means that so-called 'black letter laws' are products of negotiation processes, especially on the international level. Negotiation is a cost-effective mechanism aspiring to create peace, creating a secure environment for that peace to flourish, and establishing sustainability through the implementation of justice. It is, of course, a question of interrelationships. Peace creates favourable conditions for

This section on 'Architecture' is based on Meerts (2008).

negotiation processes, because security is needed to protect the negotiators – there have been times when killing the enemy's ambassador was seen as a way to show strength – and justice secures the implementation of the fruits of the negotiation process.

This part of the introductory chapter looks at a few central issues in negotiating peace, namely security and justice. First, the chapter will ask who is dealing with inter-state negotiation, who practises the processes, who analyzes processes/positions/people, who trains the negotiators, and how? Second, the section will deal with people and their positions, asking questions about behaviour and the balance between common and diverging interests. Third, the question of processes and the factors influencing those processes (power) will be commented upon, but also the use of negotiation as a tool in international relations: when does it work, and when not? Fourth, the interrelationships of negotiation, adjudication and warfare are brought to the fore. Finally, some concluding remarks will be made.

Academics and Practitioners

From an academic point of view, the thinking about – and research in – international negotiation processes cannot be described as a separate discipline (Faure, 2003: 11, 203). However, multidisciplinary research programmes can be found within the social sciences in which an increasing number of political scientists, sociologists, psychologists and also mathematicians are already involved. This upward trend is shown in the increasing number of books and articles in journals, and the founding of periodicals such as *Negotiation Journal* (Plenum Press) and *International Negotiation* (Martinus Nijhoff Publishers).

We might expect these academics to use their findings to train practitioners, and we could expect practitioners to help academics with their research, but strangely this is not the case. Practitioners, researchers and trainers do not communicate at the same level. Leaving aside the fact that many of the researchers are also lecturers on international negotiation at universities, and that they use their discoveries of the 'secrets' of negotiation to enhance their students' insight, they are not by definition skilled trainers. Teaching is mostly about literature, and although simulation games are used to illustrate theory, teaching is still a far cry from real training. Trainers are – if everything is up to standard – capable of providing participants with experience in negotiation processes. However, contrary to teachers and researchers, trainers are often not aware of the bulk of modern literature. They often copy what others copied from someone who once upon a time developed a practicum on the basis of academic insights. Yet these trainers can be charismatic people, who may not know as much about negotiation as they do about private-sector management, but who have the empathy to influence the thinking and frame of mind of their course participants. They may radiate strength. Participants will often remember their personality many years thereafter, but they will forget what they learned about negotiation.

One would expect a 'natural life cycle' – that is, practitioners help researchers to understand the soul of the negotiation process, while trainers would use the insights from research to train effective (future) practitioners. One could expect common understanding to grow as the sub-discipline of negotiation processes developed over the past twenty years, bringing the three groups together in joint forums. There is indeed

some more communality, but on average the cleavages between practitioners, academics and trainers have not been bridged.

We must first look at the reasons behind the persons. Many practitioners, especially those in the Inter-state Negotiations Arena – first and foremost diplomats – do not really believe that negotiation is a science; they perceive it as art. They are not alone on this. To many diplomats and other practitioners, it is an art that is inborn and cannot be learned, a feeling that is especially true for the old-fashioned diplomats. One might hope for change as time goes by, but for the moment these senior diplomats dominate the scene, as they hold the most important diplomatic posts. Apart from their perception – and perception determines reality – they are often handicapped by not fully understanding their own behaviour. They may be effective diplomatic negotiators, but they tend not to be fully aware of the 'why' questions. What does one do in order to be effective? How do we negotiate? They are so deep in their routine that they do not have the insight of efficacy traits in their own dealings with other states. It is a little like an excellent car driver, who is so good because he does not need to bother about the technicalities of driving; he has his routine, and can therefore develop a helicopter view. The mind and eyes concentrate on the environment and not so much on the mechanics. In itself this is good, and the most effective negotiators have a grip on both process and context, but this does not mean that they really understand what they are doing in order to be effective. They often negotiate on automatic pilot.

Practitioners – in particular ambassadors of the older generation – often have a certain disdain for academic negotiation research and education. They do not really believe in training as a tool to become a better negotiator. Many practitioners do not want to lose time by conferring with academics on the issue of international negotiation processes. Moreover, they do not want negotiation 'experts' to have a look in their kitchen, first because this might harm their country's national interests (the secrecy of the negotiation in order to keep some room for manoeuvre), and second, because they might lose face if consultants observe that mistakes are made and opportunities are lost. Negotiators often show their emotions, they have non-verbal leaks (such as unconscious body language), and they do not want this to be revealed to the outside world.

More serious is the second 'reality dilemma' (Klabbers, 1988), in that practitioners do not allow researchers (and trainers) to observe real-time negotiations. Negotiation 'experts' are sometimes invited to witness bilateral negotiations, but closed sessions are the rule, especially in multilateral inter-state bargaining. The consequence of this is twofold. First, practitioners do not profit from the insights of negotiation research, and indeed serious mistakes are made on matters like timing and trust, strategy and tactics, skills and styles. Indeed, obvious mistakes have been made at many conferences, and process experts would probably have noticed these and might have helped the process to avoid going off-track. Second, this attitude of the practitioners hampers academics and trainers in a serious way: unable to observe real negotiation processes has the consequence that alternative means, such as the observation of mock communication, and the study of 'memoirs' and other written accounts, have to be used in order to come as close as possible to the real processes. Interviews and surveys might help somewhat, but interviewees have a tendency to omit the things they did wrong and to stress their glorious moments.

As has been stated, there is also an abyss between academics and trainers. There are several reasons for this. Academics sometimes feel that trainers – especially those from private-sector companies – do not really deliver something worthwhile. Their knowledge of literature is often scarce, second-hand, and confined to pieces of 'academic' work long overhauled, or it is literature given to them by others, who will have often transferred it into applicable exercises. Trainers also have a problem in understanding the more complicated academic findings and, even if they do, transformation into practical tools is often precluded by the complexity of the scientific findings. Therefore trainers such as Willem Mastenbroek (Mastenbroek, 1989) and Raymond Saner (Saner, 2005), were forced to create their own tools. Just as practitioners often do not believe in the value and relevance of the academic findings, so academics mistrust the added value and correctness of the training devices. Academic programmes on negotiation analysis are on the whole very different from training modules and they are seen by many trainers – and practitioners – as being too theoretical and therefore not applicable to the education of new practitioners.

Academics go for substance; trainers for format. There are many exceptions to this 'rule', but it is true that trainers are often in the service of a company – or themselves – and they train for a living. It is just too costly to invest time in academic conferences and in writing chapters and articles, although there are consultants who try to balance the two. Trainers work in haste and because time is money, training programmes will often be 'routines', formats that are applied to any situation. Tailor-made seminars are quite rare; and seminars balancing good content and good exercises are even more of an enigma.

Chapter XI of this book will focus on simulations as instruments in creating artificial and observable negotiation processes. The fact that they are 'not for real' makes a difference of course, but people are people. Their behaviour in simulated processes is not much different from their dealings in the real process. The emotional triggers, the need to plan and to use tactics, the importance of fostering relationships, the problems in managing complexity, formality and informality: these are variables that are – to a large extent – independent from the reality question. Provided that the simulation is as realistic and credible as possible, it will provide researchers with an opportunity to gain a better understanding of negotiation processes.

Parties and Interests

Who conducts the negotiations? This section will limit analysis of the phenomenon of international negotiation to negotiations between representatives of governments. These state representatives can be divided into two categories: politicians; and diplomats/civil servants. Consequently, negotiations between states can be held either on a political or on a diplomatic/official level. The political level is the highest level and mostly preceded and followed by diplomatic/official consultations. The category of diplomats and civil servants can also be subdivided, depending on the question of whether an ambassador/director-general, a young diplomat/policy adviser, or someone in between these ranks, is conducting the negotiations.

The actors appear at the negotiation table from different positions. Apart from the interests that they have to consider, one can assume that one negotiator will be more

skilled than the other, will have a better knowledge of his dossier, is more motivated, better trained and could have more credit within his delegation, ministry or government than the other. Human differences will influence the course of the negotiations, not in the sense that they would be the most influencing factor on their own, but at decisive moments they can tip the balance. In other words, the more the other factors (that influence the negotiation process) are balanced against each other, the greater the margins in which the negotiator's personal characteristics will play a role. Personal influence might be relatively marginal in most inter- and intra-state negotiations, but as we will see in Chapter IX, margins can determine outcomes in the same way as profit margins determine a company's success.

The readiness of actors to be involved in the process depends on their interests. Negotiations will only take place when the parties, in one way or another, actually need each other. A relationship should exist between (parts of) the parties' interests. It is very important for the negotiator to know to what extent the interests of both parties run parallel, or whether they largely exclude each other. For parallel interests, a strategy of cooperation will be chosen (integrative negotiating); the second case will see a more competing approach (competitive negotiation). The negotiations take place in a situation where interests practically converge with reasons to cooperate (the lower limit), or when the interests do not converge but enough reasons exist for consultation (the upper limit). Outside these limits, there is no question of negotiating but instead of conflict or staying aloof.

In most cases, the mutual (overlapping) and competing (conflicting) interests will play a mixed role. In addition, there is often a third category of interest, in which matters are important for one's own party, but do not touch the other (neutral interests). However, one always needs to keep an eye on the latter category. To be neutral concerning interests can be of importance for those parties who are not participating in the consultations, but who will (or can) speed up the ongoing negotiations. Thus, for example, in a case when the Dutch and the Belgians will not reach an agreement, but the Dutch can offer the Germans something, in exchange for which the Germans will give something to the Dutch that is useful for the Belgians, this can lead towards a positive rounding-up of the Dutch–Belgian negotiations ('expanding the cake').

In other situations, interests can be arranged in such a way that even with the lack of parallel interests, reasons may occur for negotiating. No agreement will be reached regarding the subject in those cases, but that is not in fact what the parties involved have in mind. For example, two countries have the intention to enlarge their armaments but public opinion opposes their plans and demands negotiations on arms control before upgrading any defence. Through negotiating, both states meet the conditions that will make enforcement of their defence possible. Not only are the stated conditions met, but there is also the opportunity to point out that the other party is unwilling, and obviously has aggressive intentions in mind. Moreover, it is advantageous that both states are in consultation with each other and can exchange information. In some cases the desire to negotiate has only been prompted by the necessity to open up a flow of information. In that way, the mutual desire to negotiate has only been prompted by each party's wish to prevent an agreement from being reached. In such a situation there is an agreement of intentions *not to* come to an agreement. Much more difficult is the situation where one

of the parties does want an agreement, and the other does not (as with Chamberlain versus Hitler before the Second World War). The latter party abuses the former for totally different goals. As previously mentioned, the negotiation disguises the idea to use means other than negotiations. The question is whether, in this case, one can speak of genuine negotiations, when not all parties were striving for a negotiated agreement that had to be successfully implemented in the future.

This issue leads to the question of Forward and Backward-Looking Outcomes (Zartman and Kremenyuk, 2005). On the question of Forward and Backward-Looking Outcomes, it should be noted that a lasting peace is in need of justice to be done, plus the instalment of institutions guiding future cooperation between the contending parties – in other words, the institutionalization of the process of cooperation. The European Union is a typical example of such an institutionalized process, and the Peace of Westphalia as analyzed in Chapter VI can be seen as a very Forward-Looking Outcome, because it created the very system of sovereign states in which we are living today. The Dayton Agreement of 1995, however, which settled the Bosnian question, might be viewed as a Backward-Looking Outcome. It put an end to the war, but it did not create a truly stable framework for the future. International governance and troops therefore had to be called in to stabilize the situation until Forward-Looking rules and regulations could create a platform for successful home rule.

Parties might also have reasons for concluding peace, in other words their interests might converge, while they have opposing positions concerning justice being done. Ruling elites might very well be ready to implement a cease-fire, and to quit their posts, but they would not be happy to be prosecuted before the International Criminal Court, or any other tribunal. They will therefore refuse to conclude a peace, because they want to be protected against prosecution. We are confronted here with the dilemma of 'peace versus justice'. In some cases peace can therefore not be attained, or, when it can be attained, doing justice will be difficult, if not impossible. Institutions might not be created as the parties cannot agree on them. And if they did agree, the institutions might be so weak that peace and justice would be under a constant threat of collapse.

We need to analyze the countries' positions in order to know whether an outcome can be expected. If positions and underlying needs are completely in opposition, then we cannot expect a successful negotiation process. As soon as there is an overlap of interest, however, an outcome can be expected. Even without the contending parties having overlapping minimum and maximum reservation points, an outcome could still be constructed, provided that the parties have included more than one issue in their negotiation process, and that by combining these issues, zones of overlap come into reach ('package deals'). Depending on the interrelationship between the interests of the participating parties, we can expect more or less peace and/or justice, and thereby more or less security and/or stability.

There is one more element at stake here: the question of context. What situation are we in? Negotiation is highly situational; what is effective in one context can be disastrous in another. The question of whether negotiation and bargaining will be effective as a tool in conflict resolution is also very much connected to its context. William Zartman (Zartman, 2005) postulates that we need a push and a pull in order to start any negotiation process and to create an outcome. The push is the 'mutual hurting stalemate' (MHS): a status

quo that is painful for all the involved parties, to the extent that they prefer a change (through negotiation) over the situation into which they are locked. At the same time there should be a perceived way out of the deadlock: the pull in the form of a 'mutual enticing opportunity' (MEO). We should note here that not everything is negotiable, but in cases where there are structural problems instead of situational problems to be solved, we might at least hope for mutual respect, such as the (in)famous 'Peaceful Coexistence' at the time of the Cold War, which might be called a 'mutual beneficial stalemate' (MBS) – beneficial and satisfactory as it ensures a peaceful situation in such a way that the major powers can use the stand-off to control their own 'allies'. The MBS is stable compared to the MHS, but it thereby paradoxically precludes negotiation from being used as a tool in dealing with the underlying conflicts, because the dominant powers have no interest in solving them. Their allies may have such an interest, however, and they will do everything to undermine the MBS in order to open the situation to change. They will only be successful, however, if there is a regime change in the capitals of the hegemonic powers. In other words, negotiation can only be a successful tool if the context can be changed first. Additionally, while context determines perception, perception determines reality (Goodfield, 1999).

Process and Power

The way in which parties reach a settlement can also be divided into three categories. In the first place, there is the procedure whereby parties would like to see what are, for them, the all-important points included in the settlement: the synthesis of interests. A synthesis is often difficult to reach and even more difficult to implement. Second, there is the synergy of interests, when one tries to work not from a partial interest, but from a mutual interest. These kinds of results can be very satisfying, and can be well implemented. However, requirements include a very good atmosphere during the negotiations, and lots of time. Third, there are compromise and compensation. Compromise comes in the form of mutual concessions, in which each party loses some points and wins some, or in which parties compensate each other for their losses by trading concessions ('package deals'). Especially in unequal power situations where one party has to deal with fewer concessions than the other, this formula can lead to 'operation accomplished, patient deceased'. Agreement may be reached, but the loser might end up wanting to sabotage its implementation.

In connection with the aforementioned problems with implementation, experienced negotiators will arrange the agreement in such a way that it can be implemented step by step in order to reduce uncertainty (Jönsson, 2001).

If the implementation does not proceed according to plan, the damage will be limited. The implementation is, as it were, ingrained in the agreement and still leaves room for negotiations during the implementation process. One disadvantage of such a course of action is that trust between the parties – especially at the beginning – will remain slight, and trust is the basis of every negotiation when an agreement is required.

A negotiation process means going through various phases: preparation and diagnosis, information, searching for formulations, bargaining, and the drafting of all the details (Dupont and Faure, 1991). The factors influencing this process are so numerous that a thorough understanding of the actual proceedings is almost impossible. Previously

it was pointed out that the negotiators, with their own characteristics and circumstances, have a certain influence, but that the real determining factor does not rest with them but is ingrained in the power of the countries that they represent, or, in other words, in the power structure, the measure of asymmetry. How 'distorted' is that power structure and which factors determine this 'distortion'?

The question of the direction in which the negotiation process is moving is therefore predominantly a question of power, at least in inter-state negotiation processes. It is interesting to note here that negotiation processes between equal powers are as a rule not very effective. Some power difference is needed in order to get the negotiation process to flow. Power can be distinguished in three components: power that is marginal and originates from the negotiator (power of conduct); power of the state being represented (structural power); and power that belongs to the state regarding the issues being negotiated (comparative power). In that context, Habeeb speaks of 'behavioural power', 'structural power' and 'issue-specific power' (Habeeb, 1988).

Structural power involves the total of power factors that are available to a country in relation to that of other nations. This power is determined by issues such as the size and location (for example, a strategic position) of the territory or state, the nature of its borders, its inhabitants, the presence of natural resources, its economic structure, the level of technological development, its financial power, ethnic diversity of its population, social homogeneity, the stability of its political system (that is, how legitimate is the government?) and the nature of its people (whatever that may be, and whether it exists at all). The question that then follows is: in which way does a country handle its power? What is its 'national strategy'? Is the country reticent about using its power (as was Germany before reunification), or does it use its power in a more self-conscious manner (Germany after 1990)?

Structural power is of importance when answering the question of which countries involved in negotiations will reach the best negotiation results in the end. It is a necessary, but not a sufficient, condition for explaining negotiation results (Habeeb, 1988). In other words, it is not correct to more or less assume that in negotiations between a large and a small state the 'stronger' state will acquire the best negotiation results. History provides too many examples to the contrary, about the power of the weak and the impotence of the strong (such as the United States and Vietnam, the Soviet Union and Afghanistan, the United Kingdom and Iceland) to be able to come to a simple comparison by predicting the total weight of power of one country or the other. To obtain a better understanding, their comparative power should be drawn into the analysis. By comparative power, we mean the power structures around the issues being negotiated, or the power that is relevant in a particular situation. In practice it is impossible for a country to put forward every power potential in every field. For example, does the Russian Federation, or the Republic of Turkey for that matter, because of its enormous army, have increased power over, for example, Italy when negotiations are taking place in the field of economic cooperation? That is very doubtful. The existence of such an army certainly plays a role, but the danger is neutralized by the politico–military coalitions in which Italy finds itself. From an economic point of view, one could argue that the gigantic potential of the Russian Federation – because of its energy resources – could result in it having a strong position in the negotiations, but the time when this potential will be converted into a strong economic position is still a

long way off. Italy's comparative power is bigger than the Russian Federation when, for example, the modernization of Russia's car industry is the issue.

Comparative power is built of three components: the internal sources of power; (im) balance with the sources of power of the other states involved; and the relevance for the issues being negotiated (Habeeb, 1988). There are, however, famous examples of countries with minimal internal sources of power that, through special circumstances (such as playing powerful states, or factions within those powerful states, against each other), can build up a great relevant 'blackmail power'. Take, for example, the case of the Netherlands and Surinam during the negotiations about development aid since Surinam became independent in 1975. Comparative power is decisive, and structural power plus the power of conduct will enforce or weaken the relevant factors of power. Surinam has been capable of building up process power, or relational power, because it has been dependent on Dutch resources. Add to this the historical dimension (the Netherlands as the colonial power felt guilty about what it had done to its colonies in the past) and we can expect quite a favourable negotiation process as far as Surinam is concerned, notwithstanding – or better, because of – its weaker position.

Comparative power is influenced by three factors. The first factor is the alternatives that might be available for the relevant issue: the fewer alternatives a country has, the weaker its cause. Second, to what extent has the country committed itself: how far will willingness go to make use of its power factors? Is there, for example, a willingness to weaken a country's economic power in favour of its military power? Third, to what extent does the country have control over the issues under negotiation? A small nation can have a lead position over a bigger country when it controls the dispute in question, as was the case for Iran in connection with the American diplomats who were taken hostage during the so-called 'Iranian Hostage Crisis'. The hostages were at first in the hands of fanatics who were outside the control of the Iranian government, but once the hostages were being held by the Iranian government, it was possible to negotiate their freedom.

Bashing or Bargaining

A distinction should be made about negotiating in relation to other interactions between states, such as armed conflict, the use of international courts of law or arbitration, the use of services from third states as honest brokers, and diplomatic consultations in which certain issues are being clarified and points of view exchanged, as opposed to the phenomenon of imposed settlements or '*diktat*' such as 'Versailles', in which interaction was hardly the case. The following question presents itself here: in which cases will states prefer the instrument of negotiation, and when will they choose alternatives in international relations? If war is the continuation of politics with the admixture of other means (Clausewitz, 1984), could we then postulate – as done in Chapter V – that negotiation is war by other means? In other words, while the use of force is one way to manage a conflict, negotiation is another, and adjudication is a third road to be followed.

The choice has everything to do with the question of whether negotiation in a given situation is preferable to the use of other international interactions. Negotiating will be 'more advantageous' in cases where the state would be able to acquire what it has in mind in a 'cheaper' way through negotiations than in any other way. In short, the question about

the limitations of the negotiation process is a matter of cost-benefit analysis. Depending on the situation at that moment, the balance will be different each time. When the expected benefit is considerably higher than the cost, the desire for a stable negotiation process is obviously justified.

The problem remains that cost-benefit analysis can, relatively speaking, rarely be determined, keeping in mind the influence of other states with their own cost-benefit situations, and given the impossibility, up to the present day, to verify costs. That is the first and biggest obstacle to providing at any one time an instrument for totally getting to the bottom of 'the science of negotiation'. The second obstacle, as mentioned before, is that the researcher is not allowed to attend really important negotiations, or to carry out research in a systematic manner. Reports by the negotiators themselves are usually too biased, and not systematic enough, to enable a real scientific analysis. Third, in cases where good analysis should be possible, the results will nonetheless be so abstract because of the many factors playing a role that a more or less practical application, such as through training courses, will be difficult.

Nevertheless, the number of useful explanations about the role and direction of international negotiation processes is increasing. Slowly, but surely, there is a growing convergence of views. However, one has to be wary of those who think that they have found the stone of wisdom. They may have carried the building stones, perhaps even a keystone, but certainly not a cornerstone. Perhaps that cornerstone will present itself in the form of sound research, analysing in which cases negotiating can, and in which circumstances negotiating cannot, be an instrument of international relations.

It is interesting to observe that the notions of international negotiation processes as a method of bridging opposing interests, views and perceptions have evolved over time. In the seventeenth and eighteenth centuries, negotiations were often used as a tool in warfare. Notably King Louis XIV of France used this constellation in order to break up coalitions formed against him, resulting in a series of short-lived peace treaties and ongoing warfare on the European continent. Moving into the nineteenth century, the role of negotiation in inter-state relations became more and more substantial, as the costs of war soared with the development of modern weapons technology, which resulted in an enormous toll of human lives. In the twentieth century, states tried to strengthen the value, and enhance the stability, of international negotiation processes through institutionalization – that is, the building of institutions in order to channel and stabilize negotiation processes and thereby to secure assured outcomes. Thus we witnessed the creation of the League of Nations, the United Nations, the Organization for Security and Cooperation in Europe, the North Atlantic Treaty Organization, and the European Union, etc. With the Second World War as a turning point, we might postulate that warfare nowadays can be a tool in negotiation, whereby negotiation is seen as the main tool in managing inter-state and other conflicts. We have come a long way since the seventeenth century. The institutionalization of the processes and the relative ineffectiveness of war (by using military means we can win the war, but not the peace) greatly enhanced the effectiveness, and therefore the role, of negotiation as a tool in conflict resolution.

Focusing for a moment on the developments in peace and justice at the end of the nineteenth and the beginning of the twentieth century, international adjudication was very much seen as a tool with major potential for the resolution of international conflicts.

The two Hague Peace Conferences were convened with high hopes for the future. The Peace Palace was opened in The Hague in 1913 to host the first court on international judicial conflict management and resolution: the Permanent Court of Arbitration. After the misery of the First World War, we saw the creation of the Permanent Court of International Justice, followed after the Second World War by the International Court of Justice – all three in The Hague, and in the Peace Palace. However, notwithstanding the growing role of adjudication as an instrument in inter-state conflicts, a certain disappointment with adjudication's effectiveness ensued. War and negotiation, or negotiation and war for recent history, remained the major factors in international conflict management. In view of its relative efficiency and effectiveness, and the growing strength of the building blocks around it, we might hope for negotiation to become the dominant methodology in bargaining for international rules and regulations, and in regulating international conflict situations in order to secure peace and justice. It therefore remains important to study negotiation, in order to explain outcomes by analyzing the process (Crump and Zartman 2003, 10) and to train practitioners to become successful negotiators.

APPROACHES TO INTERNATIONAL NEGOTIATION

The seminal work of the PIN program, *International Negotiation* (Kremenyuk, 2002), which resulted from its first conference on international negotiation in 1989 in Laxenburg close to Vienna, addresses a wide range of people. It takes stock of the progress made in studying international negotiation processes and is useful for those engaged in the study and practice of international negotiation. The book approaches the subject of negotiation from many different angles, an indication of the impossibility of understanding the phenomenon through one or a limited number of approaches. The first eight chapters of *International Negotiation* are written under the heading 'Levels of Analysis', and the next nine chapters as 'Approaches and Perspectives', but all these chapters in fact try to enhance the understanding of negotiation by looking at factors involved in the process, thereby trying to get more grip on that process and attempting to explain its outcomes. The third part of the book discusses different issue-areas. Different issues have a different impact on the processes, but essentially speaking it does not matter too much what the issue-area is, with the exception of an extreme negotiation such as negotiating with terrorists. Although *International Negotiation* helps us to understand which analyses and approaches are relevant, it does not prioritize them and it does not solve the problem of lacking one paradigm that the majority of authors can agree upon. As the editor writes in his afterword, 'The contributors to this volume agree that a new and more promising approach has to be found' (Kremenyuk, 2002: 425). This approach has not been detected in the subsequent 22 years and it is doubtful whether it will ever be, as it is in the nature of negotiation to be multifaceted. This treatise will attempt to provide a better insight into these different facets.

This section was specifically written for this treatise in 2013.

Approaches from 'International Negotiation'

To Howard Raiffa (Raiffa, 2002: 5–21) in Kremenyuk's edited volume, negotiation is both an art and a science: an art in the sense that some people are better negotiators than others as a gift from nature and culture; and a science because negotiation can be learned and thereby taught. Raiffa points to descriptive, normative and prescriptive orientations on decision-making and thereby on negotiation processes. Descriptive analysis is empirical and clinical. It strives to reflect reality as much as possible. Normative analysis, however, wants to point out how people should act, ideally. It is of a much more abstract nature. Prescriptive analysis is of an advisory nature. Raiffa points out that these three approaches can be distinguished by the criteria by which they are evaluated: empirical validity; theoretical adequacy; and pragmatic value, respectively. His study looks upon negotiation as a phenomenon that, if possible, explains why the actors reach certain outcomes. Again, it must be emphasized that this is an extremely difficult academic undertaking, because of the multitude of factors influencing the process and thereby its closure. Advice for being more effective and norms to be adhered to can be given, but cannot substitute for monitoring reality and thereby attempts to get to grips with it and to draw lessons from it. The art and science issue is equally difficult to unravel, but a focus on the scientific side would be preferable, as it is even more difficult to fathom the art dimension – because of its underlying in-born and acquired characteristics – than to gain insight into the scientific one.

International Negotiation's editor-in-chief, Victor Kremenyuk, sees negotiation as a system of growing importance in international relations (Kremenyuk, 2002: 22–38). He focuses on international organizations as a systemic factor connecting different negotiation processes and enhancing their stability. Such a focus makes sense, even or perhaps especially today, but in this case it is very much influenced by the time in which the chapter was written: the frozen systemic crisis that we call the Cold War.

In their chapter, Christophe Dupont and Guy-Olivier Faure (Dupont and Faure, 2002: 39–63) point to the problems in defining the negotiation process, which they first of all identify as a sequence of proposals and counter-proposals, to converge as a result of an exchange of concessions. The problem here is to explain the rules regulating this sequencing. They follow up by sketching an alternative approach, identified as 'structural analysis', which puts power at the heart of the negotiation process, influencing the resulting currents in the flow of the process. As a third 'avenue', they spotlight 'persuasive debate' as an approach for understanding the negotiation process – the exchange of signals, information, arguments and the like. Their fourth inroad has to do with game theory, with the question here being to what extent can game theory help us to understand the ensuing processes? As process is so difficult to penetrate, students of negotiation tend to switch to the actor in the process as the focal point of their analysis. Dupont and Faure order the process into successive stages: first, preliminary contacts and pre-negotiations; second, multi-stage negotiations (that is, multiple actor, issue and stage rounds); and third, face-to-face exchanges. They then sum up the different theoretical approaches that they identify: the strategic approach; and the learning, decision-making, psychological, adjustment and reactive processes. They then turn to communication and referential variables (for example, face-saving is a referential variable). Finally, they look at

factors influencing the process of international negotiation, such as personal conditions, information, and structural issues like time.

Different cultures have different perceptions of negotiation processes. Americans and Europeans tend to see the process in a linear way, going from the awareness of having a problem and the need to solve it, to exploration, pre-negotiation, agenda-setting, further exploration, selection of issues, give-and-take, decision-making, closure, implementation, evaluation, and perhaps renegotiation, etc. This view holds that there is a specific starting and concluding point. In Africa, and foremost in Asia, negotiators tend to see the process as a circular, and thereby never–ending, stream. Connected to this is the importance attached to the relationship in that process, while Westerners often give priority to the issues at hand. Such differences in approaches have grave consequences for the flow of the process and thereby for its outcome.

In his chapter, Victor M. Sergeev clarifies international negotiation in a series of metaphors: the metaphor of bargaining, the bidding as we know it in the marketplace; then the metaphor of joint choice, the love child of the Harvard Project on Negotiation (PON); and the metaphors of joint research and joint construction of the future (Sergeev, 2002: 64–70). Metaphors can be useful and misleading at the same time. They are useful in enhancing understanding because of linkage to a well-understood concept, but counter-productive because they simplify, while negotiation is a complex process with many factors and actors. As far as the joint choice metaphor is concerned, this seems to be a cultural perspective applicable first of all to North America, but already less valuable for parts of Europe like the Balkans and the Caucasus, and much more problematic for regions in Asia and Africa such as the Middle East or the Great Lakes Region. Win–win solutions tend to be win–lose or even lose–lose, and practitioners and academics have to struggle with that. The metaphor of the marketplace is nevertheless valuable, as it highlights many elements of the negotiation process. A customer who can choose from different shops has the power of choice, of alternatives, a strong BATNA ('best alternative to a negotiated agreement', or 'best alternative to no agreement'). The merchant will have to lure the customer into the shop. If the merchant manages to do this, the context changes in his or her favour. The merchant can now use his or her power: knowledge about the merchandise, or the dossier in diplomatic terms. The merchant, or negotiator, needs time to do this, as the weaker party normally needs more time than the more powerful one in an asymmetric negotiation process. Exploration, selection and bargaining will unfold and the customer might leave the shop with more – and more expensive – merchandise than he had wished for at the start of this negotiation. The process and the time that it takes are ingredients of the power of the seller, helping him to undercut the BATNA of the buyer by creating his own alternatives.

The structure of negotiation is the approach used by William Zartman in his chapter in *International Negotiation* (Zartman, 2002: 71–84). To him,

> Negotiation is a process by which contending parties come to an agreement, but that process neither occurs nor can be analyzed merely by its own terms. It begins with a certain distribution of actor characteristics, which then become independent variables through which the process and its analysis are conducted (Zartman, 2002: 71).

The structure of the negotiation process consists of different components. Structure is the most determining factor for answering the main question in negotiation analysis: how to explain outcomes? 'Process follows form'. He sees the structural approach as the most adequate – he says 'simple' – and comprehensive technique. The basic structure of bargaining is to be found in bilateral negotiation, more than in multilateral. A host of game-theoretical approaches are based on this dichotomy, if possible under conditions of symmetry. He notes that power equality is a static condition that can be translated into the dynamism of reciprocity coming to fair closure. He notes, however, that such situations are quite exceptional in real-life processes. More realistic analysis is needed and this confronts us with, for example, the 'toughness dilemma' and the role of structural and situational power and their sources. Besides power, values are involved, and values might overtake power as well as material interests. For analyzing multilateral negotiation, Zartman highlights the importance of approaches through coalition-building, leadership and the role of structuring devices such as procedures.

He also points to the virtual impossibility of gaining a good understanding of multilateral negotiation processes, because of their complexity. Most negotiation research focuses on bilateral processes – being constituent parts, if not the nucleus, of conference diplomacy – as these are more apt for measurement. This inherent problem of negotiation gives rise to biased research. Researchers study those cases that are explainable and to a large extent ignore the complicated parts of the negotiation process. This is even more valid for the international dimension, which is more complex than multilateral negotiations within countries, for example between different ministries or political parties in parliament. More is therefore known about simple linear bargaining at a (sub-)national level – for example, in the commercial sector – than about international processes, which might explain the undervalued role of negotiation international relations theory. The sovereignty of states adds to the problem of catching the intricacies of international negotiation processes, as states are to be influenced, but being more independent than actors at the national level, they evade structural analysis. To use structural analysis where structures are lacking is not an easy task.

Strategy in negotiation is the angle of descent in Dean Pruitt's section (Pruitt, 2002: 85–96). Pruitt sees three strategic choices for negotiators: contending; problem-solving; and yielding. He then turns to the dimension of relationships, stresses the importance of them and sums up six conditions for building 'working relationships'. First, he stresses rationality. One should be rational, even if the other party acts emotionally. Second, try to understand the other party, even if they do not understand us. Third, try to communicate with them and consult them, even if they are not listening. Fourth, be honest and trustworthy, even if the other party tries to deceive you. Fifth, try to persuade them and do not go along with them if they want to coerce. Finally, be open to learning from the other party and care about them, even if they reject your concerns. He illustrates that with US–Soviet relations.

As a comment on Pruitt's approach, we should first of all acknowledge that the contending, problem-solving and yielding approach is just one of many ways to fill in the notion of strategy. Sun Tzu's dictum that strategy is nothing less than changing a situation in order to create a favourable climate for a successful negotiation (Chung, 1991), seems to be a more encompassing approach of strategy. The same seems true for the

Thomas–Kilmann strategic model of competing, collaborating, compromising, avoiding, or accommodating (Thomas and Kilmann, 1974), an approach that can be found in other formats with other authors, although it all boils down to the same perspective: combine the main option for strategies and look at their interactions. The Thomas–Kilmann model contains sixteen different interactions between the five poles of strategy. It is thereby a very flexible device, illustrating the ever-present tensions in negotiation, and indicating which strategy will be the most effective in a given situation. The conditions for working relationships, as sketched by Dean Pruitt, do not meet the conditions of 'tit-for-tat' strategies and tactics, and it is therefore no wonder that the American diplomats had problems in dealing with the Soviets in a satisfactory way (Meerts, 2009c), or with other 'difficult' negotiators who perceive openness as weakness.

Jeffrey Rubin's chapter analyzes the actors in the negotiation process as an approach to gain a better insight into its mechanisms (Rubin, 2002: 97–109). To Rubin, it is vital to ask the question 'who is the actor?', as negotiation is very much about the choice of partners. He then discusses the difference between actors who only represent themselves and those acting as an agent for a group of people, an organization, or a state – thus actors who need to be instructed, who need a mandate written by their superiors. Such agents have to stick to this mandate, but different countries have different degrees of freedom concerning the instructions they will hand out. These differences in flexibility will have an impact on the flow of the negotiation process. After the agents, Rubin focuses on the leaders and leadership, as well as the behaviour of individuals. He sees five attributes of effective negotiators. The first attribute is flexibility: negotiators will have to be flexible on means and firm on goals. Second, they have to be sensitive to various social cues about the other negotiator, although this does not necessarily mean that they have to react to that. Third, inventiveness is important: an effective negotiator has to be creative. Fourth, a negotiator has to be patient and should not react right away. Finally, the negotiator should be tenacious; persistence is important. All of these traits are influenced not only by character and experience, but also very much by culture.

It is interesting to see that Rubin's level of analysis and especially his profile of the effective negotiator are shared by many. In chapter 26 of *International Negotiation*, Willem Mastenbroek (Mastenbroek, 2002: 433–454) concludes that the effective negotiator has to: (1) realize his own interests; (2) influence the power balance; (3) promote a constructive climate; and (4) obtain flexibility. Indeed, *suaviter in modo, fortiter in re* – gentle in manner, strong on principle – seems to be a common opinion among practitioners and academics. By observing diplomats during simulation exercises, Mastenbroek noted that the most successful actors were those who worked on the relationship with the other side – empathy but not sympathy – using the process for generating new options and thereby 'enlarging the cake', while at the same time being determined to get what they wanted by using their power and influence in a civilized way. Simulations might be reflections of reality and not reality itself, but those who participate in these exercises negotiate in exactly the same manner as those who negotiate for real. The process is the same, simulated or not.

In his chapter in *International Negotiation*, Arild Underdal analyzes negotiation by looking at its outcomes (Underdal, 2002: 110–125). He therefore deals with output and impact. Underdal states that the impact of an agreement is difficult to foresee, the first reason being the uncertainty of the future, the second the options for adaption as times

change, and the third the consequences of fuzziness and vagueness of the final text. Underdal focuses on five dimensions of negotiation outcomes: the agreement; efficiency; stability; distribution; and distance from opening positions. The question of why there is an agreement, in other words why negotiations succeed or fail, is still unanswered today, although many books have been written on the subject. In itself, a negotiation process can be successful and could come to closure, but at the very end there might not be an agreement if one of the parties' leadership torpedoes the outcome. This can be done before a formal agreement has been reached, or afterwards through non-ratification: in a strict sense there is an agreement, but de facto it will not fly. Underdal then sums up three obstacles to efficiently reaching a negotiated outcome: objective choice is difficult if not impossible, and even if the parties choose the best path, they might be hindered in following it; second, there is normally more than one criterion for choice; and third, there are process-generated stakes, meaning that negotiators are not robots, but have an interest in keeping up appearances, and that interest might override the material interests for which they are striving. As far as stability is concerned, it is questionable what we mean by it. Under certain circumstances, stability of the agreement will indeed be a prerequisite for an effective agreement, while in a changing environment it will become problematic, inciting defection. Distribution of the pay-offs is an important factor, because of the negative effect of partial exclusion, which might lead to blaming and shaming and long-lasting traumas. The outcome, being backward-looking, will be a mortgage on the future. Distance from opening positions is Underdal's last point. Even if there is a favourable position for both parties, one party might be unhappy if it feels that it had to give up too much, especially compared to its counterpart.

Another issue mentioned by Underdal is the question of ambiguity, which can of course also be used in a positive way in order to secure an outcome – that is, as 'constructive ambiguity'. In many cases, diplomats have no other option than to leave space for different interpretations of the same text. In United Nations Security Council Resolution 242 regarding the Israeli–Palestinian conflict, the differences between the English and the other texts form a classic example. While the English version proclaims that *Israeli forces* will have to withdraw from *occupied territories*, the French, Spanish, Russian, Chinese and Arabic texts state that *the Israeli forces* have to withdraw from *the occupied territories*. This gives rise to different interpretations. The English text suggests that some Israeli forces might remain in some of the occupied land, while the remaining five official UN texts suggest that exceptions to withdrawal are not acceptable. There are many more cases, such as the wording of the mandate of the Disaster Relief Coordinator of the United Nations Disaster Relief Organization in draft resolution 15129(LI) of the Economic and Social Council of the UN (Kent, 1988, 138–139; Meerts, 2009d: 663–665). In reality and therefore in the exercise, the ambassadors struggle with the word 'direct' that is being pushed for by the United States, but is too strong for the French, the Soviets and the relief organizations. The problem is 'solved' by not being solved: in the English text the word 'direct' stays in; all the other official texts use the word 'orient'.

It would take too much space here to reflect on the other chapters of the 'Kremenyuk book'. It must be suffice to mention, respectively, the historical, psychological and analytical approaches by Jean Freymond, Jeffrey Rubin and James Sebenius; the legal, economic and content perspectives by Dayle Powell, John Cross and Daniel Druckman; and the

reflections on organizational, game- and cognitive theory by Robert Kahn, Wilfried Siebe and Christer Jönsson. It is also useful to highlight an interesting approach to negotiation by Daniel Druckman in a recent book, in which he sums up the six factors by which a negotiation process could be analyzed: issues; parties; process; conditions; outcome; and aftermath (Druckman, 2013: 203).

Approaches from Other Sources

Also important in the literature, Christer Jönsson analyzed eight approaches by 54 negotiation analysts (Jönsson, 2000). Jönsson states that game-theoretical approaches of negotiation as bilateral encounters between equally powerful and rational actors have been replaced by a host of new literature that takes into account factors such as complexity, continuity and culture. First, he first deals with the establishment of contract zones as a focus for research. The contract zone, bargaining, or settlement zone, also labelled as the Zone of Possible Agreement (ZOPA) – an acronym to be avoided in Russian-speaking areas (where it can mean either buttocks, or something disastrous) – is a useful approach in bilateral negotiation research. Second, some analysts focus on tactics such as credibility and manipulation to get to grips with negotiation. Third, reducing uncertainty is yet another attempt to manage negotiation processes, and this can be done in different ways, such as by agreeing on formulas before descending to details. Balancing contradictory imperatives, seeing negotiations as a series of dilemmas, and paradoxes such as honesty versus secrecy and explicitness versus ambiguity are other ways of getting our thoughts together on a subject that is as resistant to generalizations as negotiation processes. Considering timing is the fifth approach: when is a situation ripe for negotiation, and when is a negotiation ripe for resolution? A sixth way to manage negotiation processes is two- or multi-level games: the coordination between internal and external negotiation, the 'win-sets' in negotiation. This turns out to be a very popular notion among university students engaged in writing papers on negotiation. Communication processes – verbal and non-verbal, conscious and sub-conscious, explicit and through signalling – are the seventh approach. Finally, Jönsson deals with social relations, the need to develop them and their value for a successful process as the focus of negotiation research. In conclusion, he criticizes the actor-orientation of many scholars, which neglect structural parameters like international systems and institutions. He pleads for more attention to the interaction between actor and structure.

One approach on its own is Howard Raiffa's *The Art and Science of Negotiation* (Raiffa, 1982), which has already been mentioned. Its subtitle, 'How to Resolve Conflicts and Get the Best out of Bargaining', suggests a book for the general public, but it is in fact of value to students and scholars more than practitioners. Raiffa poses some organizing questions, including: is an agreement required, is ratification required, are threats possible, are there constraints or time related costs, are the contracts binding, are the negotiations private or public, what are the group norms, and is third-party intervention possible? He then turns to research perspectives. In the three ensuing chapters, he deals with two parties negotiating one issue, two parties bargaining on many issues, and many parties negotiating many issues.

Nevertheless, Raiffa's book leans in the direction of another category of negotiation literature, and by far the most extensive one: books presenting negotiation as a kind of fractured, but still homogeneous phenomenon. These works are meant to help the reader to come to grips with negotiation in order to understand and/or manage it. The genre is less doubtful about our potential to understand negotiators and negotiation processes, but thereby it cannot be accurate, because negotiation, it has been said, is a colourful and multi-dimensional species. Leaving aside the host of 'airport books', which are meant to give readers straightforward advice in understandable steps and models that help them to become effective negotiators during the flight time they have, apart from the often non-academic value of these books, the topic is much more about negotiation as such, foremost in the commercial sense. Of the substantial academic and semi-academic literature on international negotiation, a few interesting books are selected here in an attempt to streamline our understanding of negotiation.

How Nations Negotiate by Fred Charles Iklé (Iklé, 1964) is, even today, one of the first and most seminal works on international negotiation processes. Iklé rightly notes (Iklé, 1964: ix) that 'although negotiation has happily been more prevalent in the relations between states than war, it has never been studied with the same incisiveness'. He first discusses the question of agreement and disagreement, and then identifies five objectives of negotiation: extension; normalization; redistribution; innovation; and side-effects. Iklé focuses on different factors in the negotiation process between states: the rules of the game; domestic affairs; personalities; interpretations; the ways to reach outcomes; and effective negotiators' negotiation skills. Like other books at the time, his work breathes the atmosphere of the Cold War, although he is not at all a Cold War warrior. The RAND Corporation supported his research, which is understandable, as the Americans were not too happy with their negotiation efficiency in dealing with the Soviets.

William Zartman and Maureen Berman's *The Practical Negotiator* helps practitioners as well as scholars to deepen their understanding of negotiation (Zartman *et al.,* 1982). Their thread is the sequence of the negotiation process, already touched upon when discussing formula and detail: after a diagnostic phase, establish a formula without touching upon the issues at hand, and then turn to the detail phase, being aware of the fact that the devil is going to be found there. How to operate with that devil is one of the issues in the book and, as we distrust the devil, valuable advice is given about enhancing trust. Of the book's many useful insights, one should be cited here: 'by now the world has established an international diplomatic culture that soon socializes its members into similar behavior' (Zartman *et al.,* 1982: 226). This, of course, will enhance the effectiveness of negotiation as an alternative to warfare. The book is based on interviews with experienced – most of them international – negotiators, who had been asked: 'What do you know now about negotiation that you wish you had known when you first started?' Twenty-three American, eleven non-Americans and 51 UN ambassadors and staff were interviewed, the vast majority being diplomats (Zartman *et al.,* 1982: 231–236).

Roy Lewicki, David Saunders and Bruce Barry wrote the very lucid book *Negotiation* to explain the topic to – first of all – university students (Lewicki *et al.,* 2006). They deal with the fundamentals of negotiation, including its nature, the difference between distributive and integrative processes, and the question of strategy and planning. To them, negotiations have the following characteristics: (1) there are two or more parties;

who (2) have a conflict of needs and desires; they (3) choose to negotiate because they think it is in their interest to do so; (4) 'give and take' is to be expected; (5) they prefer negotiation over open fighting; while (6) successful negotiation involves the management of tangibles and the resolution of intangibles (Lewicki *et al.,* 2006: 6–8). In part two of their book, they discuss perception, cognition, emotion, power, influence, ethics and the importance of communication. Part three deals with relationships, agents, constituencies, audiences, coalitions, multiple parties and teams, which they define as contextual factors. They then move to individual differences in part four, such as personality, abilities and gender. Part five deals with culture, and part six with the resolution of differences, as there are impasses to be overcome, mismatches to be managed, difficult negotiations to be handled, and negotiators to be tamed, for example through intervention by third parties. They conclude with a list of ten best practices: be prepared; diagnose; have alternatives; be willing to walk out; master paradoxes; remember intangibles; manage coalitions; protect your reputation; do not forget that rationality and fairness are relative; and learn from the experience (Lewicki *et al.,* 2006: 517).

Getting to Yes: Negotiating Agreement Without Giving In, by Roger Fisher, William Ury and Bruce Patton (Fisher *et al.,* 1991), is by far the most successful 'how-to-do book' that is based on academic insights. Of all the books on negotiation, it is by far the most cited. Its approach is that of common problem-solving. The authors advise the reader to separate the people from the problem, to focus on interests and not on positions, to invent options for mutual gain, and to insist on using objective criteria. Although the book is a practical guide to effective negotiation in the Western world and in the United States in particular, it is doubtful whether the formula will work in regions of the world where the people are the problem, negotiators prefer positional bargaining, options for mutual gain are unthinkable as the parties do not want their adversaries to get any profit from the process, or where subjective criteria dominate the proceedings and no authority or organization can set objective measurements.

In the French-language, it is first of all the late Christophe Dupont who wrote the crucial treatise *La négociation: conduit, théorie, applications* (Dupont, 1986). With this book, Dupont put France on the map again, after a long absence since the famous French diplomatists wrote about the process of negotiation and the most effective way of handling it in the fifteenth to eighteenth centuries. Proof of his decisive role are the '*mélanges en l'honneur de Christophe Dupont*' (Colson, 2011). In addition, focused on practice is *La négociation: Situation et problématiques* (Faure *et al.,* 1998), which analyzes not only international conflict situations, but also national and commercial cases.

Scholar Frank Pfetsch (Pfetsch, 2006) and practitioner Alexander Mühlen (Mühlen, 2005) have written interesting books for the German-language world. Pfetsch's approach is very much from the perspective of the phases in the negotiation process. He then focuses on conflict as the central issue in negotiation, discussing actors and factors, such as culture and power, and bringing the question to closure. His hypotheses on conflict and negotiation are interesting, with the first being that the nature of the conflict will determine the way to negotiate (Pfetsch, 2006: 207). Mühlen's book is comparable to that of Pfetsch, be it more directed to the field of diplomacy, with less on ad-hoc conflicts and more on ongoing processes of decision-making.

Ralf Spiller's 'German' contribution is that of process orientation as well, especially as far as multilateral negotiation is concerned. He prefers process over structural and decision-making approaches, as it allows for a better grip on complexity, while it does not rely on simplifications:

> *Angesichts der enormen Komplexität multilateraler Verhandlungen und der daraus resultierenden geringen Zugänglichkeit für spieltheoretische Ansätze – es sei denn, man trifft eine Riehe von stark simplifizierenden Annahmen – erscheint ein prozessorientierter Ansatz besonders fruchtbar (Spiller, 2008: 35).*

(A process-oriented approach seems to be more fruitful, because of the enormous complexity of multilateral negotiations, and as a consequence the very limited function of game theory in enhancing the understanding of multilateral negotiations, unless one strongly simplifies the assumptions).

Rudolf Schüssler agrees with Spiller, as far as negotiation in general is concerned, although he does not deny that game theory has some value for understanding negotiation processes: 'I do not see more than simple proto game theory is needed, but on this count game theorists might prove me wrong' (Schüssler, 2013: 31).

Raymond Saner provides insights in the German (Saner, 1997), French (Saner, 2003) and English (Saner, 2005) languages. His standard work takes the negotiator by the hand and guides him through the negotiation wonder world. Saner's approaches are on distributive and integrative bargaining, strategy and tactics, phases and rounds, negotiation behaviour and culture, etc. His books are basically the consequence of his negotiation seminars of the last three decades.

Willem Mastenbroek wrote a very handy guide to effective negotiation behaviour with his aforementioned book *Negotiate* (Mastenbroek, 1989). His work is different from many of the hands-on books mentioned earlier, as he approaches negotiation in a more synergetic way through a series of models, explaining to negotiators which behaviour is the most effective in which situation. In conclusion, he states that the ideal profile is that of a negotiator who is tough on interest and power and lenient on relationship and exploration, as has been mentioned above. His work bears some resemblance to the ideas of Fisher, Ury and Patton, but it was not derived from their book and it strikes a more realistic note.

The last book mentioned here is a bit different from the others, as it is a guide to diplomats who have to negotiate multilaterally. Johan Kaufmann's *Conference Diplomacy* (Kaufmann, 1996) helps practitioners to deal with the procedures of institutionalized conferences, especially in the context of the United Nations. Its companion book, *Effective Negotiation* (Kaufmann, 1989), presents sixteen case studies from different authors, but does not point out how to negotiate in an effective way. Kaufmann follows the *Oxford English Dictionary* by defining diplomacy as 'the management of international relations by negotiation; the method by which these relations are adjusted and managed by ambassadors and envoys; the business or the art of the diplomatist' (Kaufman, 1989: 1). He then deals with decision-making through voting and consensus, the organizational and human setting, the role of presiding officers, secretariats and groups, the characteristics

and requirements of delegations, permanent missions and conference diplomats, as well as tactics, instructions, speeches and coalition-building.

The journal *International Negotiation* is of enormous help in understanding the different approaches to diplomatic negotiation, as well as the many negotiation processes that it intends to clarify and discuss. The most important articles on approaches and negotiation research are to be found in issues 7:1, 8:1, 8:2, 9:3, 10:1 and 14:1. Useful as well is *Negotiation Journal*, especially issues 18:4 and 25:4, which are of interest as far as theory and approaches are concerned. In the introduction to the 25th anniversary issue, Carrie Menkel-Meadow gives us an interesting overview of the history of American – foremost the Harvard Project on Negotiation – negotiation theory, practice and teaching (Menkel-Meadow, 2009). Her article provides us with fourteen clusters of questions for future research. In the same issue of *Negotiation Journal*, some interesting counterintuitive findings of negotiations at, around and off the table put our feet back on the ground (Druckman, 2009). After all of the treatises on negotiation processes where we found some valid generalizations, exceptions pop up again. Finally, the journals *Group Decision and Negotiation* and *Négociations* should be mentioned here, while very interesting articles on negotiation can also be found in journals such as *International Organization*. In addition, the non-peer-reviewed *PINpoints Network Newsletter* (www.pin-negotiation.org/PINpoints) of the PIN program provides us with new ideas and findings, which might lead to new approaches in international/diplomatic negotiation in the near future. Its Dutch branch is the Netherlands Negotiation Network (NNN).

Approaches to diplomatic negotiation are scattered in such a way that one conclusion on its character and conduct cannot yet be made. Perhaps there will never be consensus on this, as the karma of negotiation will not allow for it. Actually, as scientists try to gain a better understanding of international negotiation processes by chopping international negotiation up into different categories, the picture gets more blurred each year. Daniel Naurin, for example, distinguishes deliberation and rhetorical action as separate categories from integrative and distributive bargaining (Naurin, 2010: 38). In his useful analysis of negotiations in the Council of Ministers and its preparatory committees, Naurin separates arguing from bargaining (Naurin, 2010: 32). In this book, however, elements like rhetoric, deliberation, argumentation and bargaining are regarded as part and parcel of the wider process of negotiation, even integral phases of it.

This introductory chapter has dealt with a wide variety of views on international/diplomatic negotiation, which can perhaps be looked at through another perspective by focusing on the question of why certain processes give birth to certain outcomes. In this respect, Zartman indicates five schools of knowledge on negotiation processes (Zartman, 2013: 210). First comes the 'structural school', which uses power as the means to explain outcomes of negotiation processes, 'asserting that the strongest wins'. Second, there is the 'strategic school', which uses game theory to explain the connection between process and result. Third, there is the 'procedural school', which uses the economic approach, whereby a range of concessions is analyzed. At a certain moment the costs become too high and the margins disappear, but just before this happens the optimal outcome will be reached, as determined by the balance of costs and benefits. The fourth school is the 'behavioural school', wherein personality types are the variable and outcomes are explained by the chemistry between the negotiators. Fifth, Zartman identifies an 'integrative

school', which views negotiation as a staged process, with the actions at each stage then explaining the final outcome of the negotiation process. Zartman himself employs a mixed approach (Zartman, 2013: 212). He characterizes 'negotiation as a choice of partners, as an establishment of relations, as a contest of alternatives, as a confrontation of power [...], as a process of elimination, or as problem-solving'. In the context of this treatise, one could add to his view: 'as an instrument in diplomacy', be it as a governance tool in day-to-day ongoing processes about non-violent issues, or as war by peaceful means in ad-hoc negotiations in situations of violent conflict.

In Conclusion

This introductory chapter has looked at the architecture of, and the approaches to, international – and thereby diplomatic – negotiation processes. It noted that a cleavage exists between practitioners, researches and trainers in the field, creating disconnectedness that cannot easily be resolved. The main components of international negotiation were considered: parties and their positions, the process and power involved, and the tension between bashing and bargaining – in other words between competition and cooperation. Negotiation was seen as an instrument to be used in situations where competition and cooperation are both immanent. If competition is dominant, distributive negotiation can be expected; where cooperation is the dominating mode, however, integrative negotiation can be implemented. If the cooperative mode is excluded, negotiation will not be applicable. The parties might use force, or freeze, or flight as instruments in dealing with the conflict at hand. Where the competitive mode is absent, negotiation will not be needed. Parties can discuss how to cooperate or not to cooperate, but a give-and-take process will not – or will hardly – be applied.

Approaches to international/diplomatic negotiation are manifold. The main lines of thought and research are qualitative and/or quantitative. In qualitative approaches, situations are analyzed through case studies on the basis of more-or-less consensus among negotiation academics on dimensions such as ripeness–unripeness, inclusion–exclusion, assured–unassured outcomes, etc. Although the formulation of these dimensions is still in progress, some kind of common understanding can be observed. It took academics half a century to reach this plateau. With a broader view, pondering on the meaning and effectiveness of negotiation can be stretched back to the seventeenth century or even earlier. According to the qualitative approach, negotiation is too complex and too situational to be put in a single model, or to be open for overall mathematical analysis. Richelieu already observed that 'different circumstances require different approaches' (Berridge *et al.,* 2001: 77). This book approaches the process of international negotiation and its subset of inter-state – that is, diplomatic – negotiation through the qualitative holistic path. From that perspective, the quantitative approach is a very useful addition to the qualitative method. It provides valuable insights into those elements of the negotiation realm that are calculable. A combination of both approaches helps us best to understand the negotiation phenomenon, in the sense that the quantitative method is an addendum to the qualitative approach. However, this is only part of the problem.

The other problem is about the researchers themselves: not only how they approach negotiation, but also by which means. First, their perspectives are influenced by their culture, but more seriously they rarely have an opportunity to be present at the negotiation process. Practitioners could therefore play the role of observer and participant at the same time, but most practitioners are too involved in the process to be able to hold a generalist view. Some of them do, however, and they publish very valuable accounts, but interestingly enough they are often kept to the sidelines, or at least denied the leading role in the negotiation of which they are part. 'Although a close and fascinating observer at the Congress of Westphalia, he [Abraham de Wicquefort] seems not to have influenced their outcome' (Keens-Soper, 1997b: 88). On the other hand, 'as a secret envoy, he [François de Callières] negotiated the crucial terms with the Dutch which led to the Congress of Ryswick and a short-lived peace' (Keens-Soper and Schweizer, 1983: 106), although de Callières was denied the post of Head of Delegation. David Hannay, who wrote an interesting account on diplomacy and its negotiation processes, managed to be one of Britain's main multilateral negotiators both in the European Union COREPER and in the United Nations Security Council, but was barred from becoming Foreign Minister for political reasons – his pro-European stand – by Britain's Prime Minister Margaret Thatcher (Hannay, 2013). These academic practitioners are essential in helping academic researchers to formulate a theory of international negotiations, but the perspectives cannot be brought in line.

It is suffice here to quote Scott Burchill and Andrew Linklater in the introduction to their reader *Theories of International Relations*: 'There is no agreement about what counts as the best line of argument in any theory, and no agreement about whether their principle achievements can be combined in a unified grand theory' (Burchill and Linklater, 2009: 12). Negotiation is the tool to reach agreements where they are lacking, either through compromise, or trade-offs, or both. In academia this will not help, as science is not a matter of compliance.

PART ONE

The Nature of Diplomatic Negotiation: General Reflections and Insights

CHAPTER II

Aspects of Diplomatic Negotiation

CHAPTER II: ASPECTS OF DIPLOMATIC NEGOTIATION

As was outlined in chapter I, international negotiations are different from national negotiations in the sense that there is no overarching authority to correct negotiators who fail to reach a conclusion. There is more control in national negotiation, less control in international negotiation, while transnational negotiations such as those in the European Union are a hybrid of the two. International negotiations can be conducted between private and public representatives.

This study labels international negotiations in the public sector as 'diplomatic'. Diplomatic negotiations can be between politicians and their representatives from different states, or between civil servants in international organizations. The first part of this chapter sketches the evolution of the international/diplomatic negotiation process, while the second part deals with the nature of diplomatic negotiation. Understanding its evolution is seen as an important aspect of understanding diplomatic negotiations, actually in understanding the complexities with which they are confronted: 'the vital importance of the past – an awareness of the history of a country or a people – in understanding the complexities of the present' (Kingsley de Silva, 1996: 111).

Diplomatic negotiation is as old as the international system itself. Since the birth of the first sovereign units in China, the Indian subcontinent and the Middle East, the desire to establish official relations has existed. Representatives were sent back and forth to establish international hierarchy and to spy on one another. Yet it was only during the Renaissance that a system was established in which representatives were accredited to another country and stayed there for some time (Berridge, 1995: 32–55). The travelling ambassador made way for the ambassador-in-residence and, as a result, negotiations developed a more structured character. Only as an exception were ambassadors sent who returned to their sovereign directly after negotiations. The resident ambassador became the first-level negotiator, a role that lessened somewhat during the last century with the development of large international conferences and increased ability to communicate between capitals, made possible by advances in transportation and communication. The present-day ambassador will be discussed in the second part of this chapter, while the first part of the chapter will sketch out development towards that position.

THE DEVELOPMENT OF DIPLOMATIC NEGOTIATION

We learn from the Book of Ecclesiastes, 'The thing that hath been, it is *that* which shall be; and that which is done is that which shall be done: and *there* is no new *thing* under the sun' (Ecclesiastes 1:9). Diplomatic negotiation is no exception to this rule. Since at least the middle of the third millennium BCE, the city-states of the ancient Near East maintained friendly relations – or prepared for war – using the paraphernalia of diplomacy. Well-organized bureaucracies, based on the palace and consisting of officials trained in scribal schools, exchanged ambassadors and messengers bearing cuneiform tablets written in Old Babylonian. Calling each other 'brother', kings 'at peace' exchanged gifts, cemented their relationships with dynastic marriages, traded along the major routes, made military alliances, settled boundary disputes, and in general 'gratified each other's desires'. Their relations were regulated by an elaborate system of law, protocol and finance, and they negotiated numerous treaties (Kuhrt, 1998: vol. 1, 40–44; Beckman, 1996).

We know all this from the vast archives that were preserved for millennia in the *tells* – ruined mounds of ancient cities – to be rediscovered from the nineteenth century onwards. The royal archives of Mari, for instance, which consist of over 25,000 baked clay tablets, were found in 1936 by a French expedition. To date, 31 volumes have been translated and published in French, under the auspices of the French Foreign Ministry. Among the voluminous diplomatic correspondence dating to the 1760s BCE is material that sheds light on many features of early international relations, including in great detail the forms, conventions and substance of negotiations. Thanks to the highly informative dispatches of the envoys of King Zimri-Lim of Mari, we can read among many other things blow-by-blow accounts of peace negotiations between Mari and the Babylonian King Hammurabi.

At one point, Zimri-Lim's ambassador, Abu-Machin, presented Hammurabi with the draft text of a peace treaty between the two countries. There followed long negotiations over possession of the town of Hit, which the allied kings had captured from Eshnunna. (Hammurabi did not know it, but Hit was non-negotiable because Zimri-Lim's soothsayers, reading the entrails of two lambs, had ruled on the impermissibility of its concession.)

'Why, despite all his fine words, does Zimri-Lim raise obstacles?', Hammurabi complained. 'My master has never coveted anything that did not belong to him', Ambassador Abu-Machin responded. 'Strike out Hit from the list of undertakings so that I can commit myself', Hammurabi insisted, explaining why he wanted Hit:

> Your country's strength is in its donkeys and wagons, but my country's strength is in its boats. I want this town for its bitumen and oil. For what other reason might I want it? In exchange for Hit, I'll lend a sympathetic ear to whatever Zimri-Lim writes me. On the matter of Hit, I cannot concede (Elgavish, 1998: 66).

This section on 'Development' is based on Cohen and Meerts (2008); on Meerts (2011b); and on Meerts (2013d); as well as partly based on Meerts (1999).

And so a tough negotiation unfolds, with Hammurabi proposing third-party arbitration to break the impasse and Abu-Machin stubbornly resisting. The Mariote ambassador reported: 'I clarified the treaty obligations but he maintained his opposition in the matter of the town of Hit, arguing at length. I still did not agree with him, presenting my arguments in a way that he might find acceptable, wearing him down. Hit is now the last subject under contention' (*ibid.*).

At the final stage of a negotiation, drafts of the treaty were exchanged in the form of a 'small tablet' brought by visiting delegations passing to and fro between the two capitals, and the kings – who never met – pledged themselves to its contents (Charpin, 1988: 144). Even at this very late stage, discussions continued on some point of detail that one of the parties insisted be included (Elgavish, 1998: 71). Final drafts of the treaty in the form of a 'great tablet' were then exchanged. In separate ceremonies at which solemn oaths were sworn to the gods, the kings and accompanying ambassadors each divided an ass and walked between the two halves.

In the Mari tablets, and also the diplomatic correspondence from the famous el-Amarna archive (Moran, 1992; Cohen and Westbrook, 2000), we find thoroughly familiar procedures and ploys – extravagant opening bids, drawn-out middle-games, fallback positions, trade-offs, deadlines, last-minute demands, face-saving compromises, and so on. Arguments were made to morality, legitimacy, love, family piety, vanity, interest, the law and treaty obligations. Intelligence on military and diplomatic matters was assiduously collected, sometimes to be used in the negotiations. Soothsayers and prophets played an important role in the decision-making process.

At one level, negotiations seem to be about the exchange of princesses, gifts, physicians and sacred idols. At another simultaneous level, the issues at stake are finance, trade, the stability and survival of the regime, prestige, interest, the defence of the realm and imperial expansion (Elgavish, 1998: 62–71). By the time of King Solomon's late tenth-century BCE negotiation with Hiram, King of Tyre, for the supply of cedars to build the temple to Yahweh in Jerusalem (1 Kings: 5), the conventions and tactics of diplomatic negotiation had been thoroughly honed for over 1,000 years.

In the 3,000 years that have passed since then, the procedures and substance of negotiations have evolved. On the whole, soothsayers are no longer consulted (although astrologists sometimes are). Sacred oaths and sacrifices do not accompany treaty signings (although such occasions are still surrounded by an aura of solemnity and treaties are held to be sacrosanct in some way). Nevertheless, there is an undeniable family resemblance between the proto-diplomacy of the great kings of eighteenth-century BCE Mesopotamia and the sophisticated diplomacy conducted by the great kings of eighteenth-century CE Europe.

The resemblance partly derives from inherent, structural features of mixed-motive games, where the need to cooperate in situations of rivalry dictates resorting to negotiation – that is, joint decision-making under conditions of interdependent choice. At the same time, comparison of the assumptions, concepts and forms – the ontology – underpinning diplomacy in general and negotiation in particular in the two periods suggests the following proposition: that ancient Near Eastern, cuneiform diplomacy is the linear ancestor of modern diplomacy. Key ideas that are central to our civilization – such as the state, sovereignty, boundaries, diplomatic relations, war, peace, treaties, ratification,

ambassadors, delegations, passports, diplomatic notes, inviolability, and so on – were not invented by the ancient Greeks, let alone by the Italians of Renaissance Italy, but were handed down from Sumer and Akkad.

There can be no denying that the comparative analysis of historical cases has not been given the emphasis that it deserves by students of negotiation. Yet diplomatic negotiation is a fundamental human activity whose origins are lost in the mists of antiquity. Like other great institutions such as writing, governance, banking, medicine, the law and so on, it is enlightening to study its development over time. To date, the historical study of negotiation has largely been the province of historians and philologists, ancient and modern. Both historians and theoreticians have suffered from this cross-disciplinary compartmentalization. Historians of the ancient Near East have sometimes written about diplomacy while failing to grasp that one of the key roles of the diplomat is to negotiate.

As far as the student of negotiation is concerned, the study of historical cases – indeed, of the history of negotiation as such – has several justifications. First, it permits us to identify invariant structural features of negotiation that are more evident when viewed from afar than up close. Second, like students of embryology, observing the embryo helps us grasp the function of otherwise puzzling features of the fully developed organism. Third, if it is accepted that the basic ideas, the ontology of diplomacy and international relations are not continuously being 'socially constructed', it follows that the prospect of them being reinvented in our present brave new world is less likely than some people wishfully claim: again, we return to 'The things that hath been, it is *that* which shall be' (Ecclesiastes 1:9).

Finally, one good reason for studying negotiation with a historical perspective is that by focusing only on the recent past, we overlook most of the evidence on negotiation. Few negotiating specialists study cases from before the First World War, thereby excluding 4,500 years of recorded history. When we study a contemporary case, we invariably have limited access to the archives, can observe only one side of the story, are often biased in a nationalist sense, and are unable to place the episode in the perspective of the *longue durée*. In contrast, historical cases can be researched while drawing on a much richer documentary database. We know how things worked out, plus, frankly, who cares whether Babylon or Mari struck the better deal?

In a special issue on 'The Evolution of International Negotiation Processes', the journal *International Negotiation* (2008: Vol. 13, No. 2) aimed to contribute to amending the lacuna noted above in the literature on negotiation. There have been some direct attempts (Lempereur, 2002; Dupont, 2003; Dupont and Audebert-Lasrochas, 2005; Meerts, 2005b) and indirect attempts (Numelin, 1950; Mattingly, 1955; Hamilton and Langhorne, 1995; Holsti, 1991; and Holsti, 2004) to do this in the past. Articles on different subjects and periods of international relations history were brought together in order to provide insight into inter-state negotiation processes and negotiators then and now. They shed light on the impact of historical context on negotiation strategy and tactics, skills and styles, power and positions, procedures and processes, and outcomes and implementation. Comparisons with contemporary negotiation processes are made as often as possible.

The Problem of Establishing Outcomes

A successful outcome cannot be guaranteed. Mistrust between monarchs, and therefore between states, has through the ages dominated mutual relations (Cohen and Westbrook, 2000). Negotiators were – and not seldom – killed, as this was seen as a signal for the opponent that the negotiator was an unequal partner. The envoy in fact represented his master and was seen as the personification of his monarch. In a way, this is shown in the position of the modern-day ambassador. To kill the representative of the other country was, therefore, a show of power and this behaviour cost some rulers dearly. The Shah of Chwarezm (Persia) showed his contempt for the Mongolian ruler Ghenghiz Khan by killing his entire representation, but the Shah did not survive these policy measures for very long. Apart from the material losses, the Mongol leader also felt that he had lost face, and this outraged him. The news of his envoys' execution, as recorded by Ata-Malik Juvaini, the Persian servant of the Mongol Ilkhans of Persia in the late thirteenth century, 'had such an effect upon the Khan's mind that the control of repose and tranquillity was removed, and the whirlwind of anger cast dust into the eyes of patience and clemency, while fire of wrath flared up with such a flame that it drove the water from his eyes and could be quenched only by the shedding of blood' (Black, 2010: 11).

States in ancient times were looking for means to increase trust in each other by exchanging hostages. The Kaghan of the Khazars – the Turkic tribe in Ukraine that converted to Judaism in the ninth century CE – not only demanded that his Hungarian and Bulgarian vassals come to an agreement with him, but also received hostages of royal decent at his court as a guarantee. A more subtle guarantee for negotiating results was the arranged marriage of children to an instantly conjured-up ally. By marrying the daughter of the Khagan, the emperor of Byzantium acquired more certainty about the intentions of his Khazar allied forces (Meerts, 2004a). All in all, these guarantees were of limited value and, in the given situation, going to war remained, until far into modern times, a more effective method in settling conflicts than inter-state negotiation.

Nevertheless, attempts were made to push back violence by establishing diplomatic networks, especially in Renaissance Italian city-states. In the course of the following centuries, negotiation increased in significance, probably also under the pressure of greater devastation caused by the advancing weapons technology. In the seventeenth century, the use of bilateral negotiations was intensified, which was reflected by the introduction of parallel bilateral negotiations. Whereas negotiations were limited before to discussions between two parties who would meet at a previously arranged location, it now became fashionable to start discussions at one particular meeting point with various representatives of 'states'. The big example is the negotiations of the Peace of Westphalia in Münster and Osnabruck. These were, however, not yet multilateral negotiations (see chapter VI).

Parties continued their bilateral negotiations, in general indirectly through a go-between. In this manner, the strong party had an advantage that could only be annulled in a multilateral framework, but this was at that time out of the question. One of the advantages of multilateral meetings is their repetition, which helps to stabilize relationships and thereby negotiation processes. As it was not yet possible to organize true multilateral talks, some attempts to enhance repetition and thereby stability were already being

made. Berridge notes that Richelieu saw the importance of continuous negotiation as a stabilizer: 'What is immediately impressive about Richelieu's account of the value of *négociation continuelle* (continuous negotiation) is the quite extraordinary emphasis on it' (Berridge *et al*., 2001: 73). 'Providing the capacity to persuade other states to favourable agreements with eloquence and reason, as well as the ability to observe them closely and so avoid unpleasant surprises, were strong arguments for continuous negotiation' (Berridge *et al*., 2001: 75).

Negotiators did, however, convene in a multilateral fashion for ceremonial gatherings, but this was no way to negotiate, assembled in the guesthouse of some or other party. It is, incidentally, interesting to note that ceremonial gatherings were significant, however, because the way in which the seating plan was arranged, for example, could show the balance of power. The individual who sat closest to the chairman/negotiator was the most important, which is why, to enhance their status, church monarchs dressed themselves in ecclesiastical robes. For the formal part of the Treaties of Ryswick (now Rijswijk) at the end of the seventeenth century, the negotiators were seated in a circle without a table, otherwise one could not be certain about the goings-on under the table. Heralds made sure that diplomats were led into the ceremonial room at an equal pace, so that one person could not claim precedence above another.

It is important to note that during this time, the negotiation process was also used as a means of warfare, as for instance by Louis XIV. During the expansion of France, Louis XIV was placed against forceful coalitions that he played out through peaceful negotiations, after which he again restarted the struggle until, yet again, a strong opposition developed. The consequence of this strategy is a whole series of void peace treaties.

Only in the nineteenth century were multilateral negotiations introduced as a method to regulate the international power structure, thereby facilitating successful outcomes. The significance of negotiation as an alternative to warfare was on the increase, but the problem of mutual mistrust remained. Effective handling of this phenomenon presented itself at the beginning of the twentieth century with intergovernmental international organizations, as already mentioned, such as the Court of Arbitration (at the end of The Hague Peace Conference), the League of Nations, and the United Nations, etc. The idea to create international organizations to regulate international relations between states and thereby enhance the effectiveness of international negotiation processes was not anything new. Immanuel Kant had already observed that a League of Nations modelled after the agreements forged a necessary condition in societies for international stability: '*dass ein Völkerbund, nach der Idee eines ursprünglichen gesellschaftlichen Vertrages, notwendig sei*' (Kant, 2011: 75) (that there has to be a League of Nations congruent with the original social contracts). It is ironic, however, that the birth of these international bodies, whose aim is to establish a framework for the negotiation process and to provide guarantees for its observance, coincides with the most terrible wars in history.

To put these international negotiation processes into a framework, a great number of international organizations came into being after the Second World War, from regional to universal, and from sector-specific to general. These organizations formed a forum for the peaceful solutions of conflicts and for joint solutions to joint problems. International organizations differ greatly in their degree of institutionalization, ranging from the refined Conference-Secretariat of, for instance, the Group of 77 to the partly sovereign European

Commission. The result of this development is a patchwork of multilateral forums, in which diplomats and civil servants of close to 200 sovereign states negotiate with each other.

Changes over the Centuries

An important difference between international negotiation processes of the past and present is the question of the **relevance** of the bargaining process in conflict management. If warfare and negotiation are seen as alternatives – if both are politics by other means – warfare was the priority tool in inter-state conflict until the twentieth century. This is an interesting paradox, as no other era has seen such massive warfare as the last century. On the other hand, no other period in European history has witnessed such substantial periods of stable peace as the nineteenth century (Kissinger, 1957: 1–3). Throughout the centuries, negotiation became a more relevant tool, although warfare for a long time remained the preferred means to settle problems. In Europe, negotiation gained strength because of four developments.

The first development was **technology**. If anything characterizes human history, it is the change in technological devices. One can question the development of culture, for are we at a higher level than in the past? Perhaps not. One can state that art did not develop into a higher stage, but who is to judge the quality of Rembrandt's work compared to modern and ancient art? One can question the development of the human psyche, of human health, yet are we better off than in the past? Perhaps we can acknowledge that our political systems reached some sort of ripeness. We can definitely prove, however, that technology evolved in a positive way, that it reached a higher standard than in classical times, medieval times, or the Renaissance. Technology influenced warfare in the sense that it created more destructive weaponry than ever. At the same time, technology gave diplomacy the sophisticated tools needed to forge organizations channelling negotiation processes. It contributed to the availability and speed of information facilitating effective negotiation. While technology made warfare an often too dangerous sword to wield, it made negotiation a more effective tool to bridge the gap.

The second development was that of **regime-building**, which will be discussed in chapter III. Regimes, in the form of international agreements stipulating rules and regulations of conduct and – at best – allowing for sanctions against those parties that do not comply with the understandings that have been made, can compensate for lack of trust by imposing control. They provide information about the parties' behaviour and monitor their activities. Regimes can go a step further by establishing international organizations in order to have a more durable and ongoing surveillance of the (mis)behaviour of states. Surely, leaders might trust each other, but why should states set their *raison d'état* aside for something as feeble as trust, which can be turned over from one day to another? Not having any regimes to stabilize negotiation processes and secure the outcome contributed to the idea that bargaining could be – at most – a sideshow in warfare. Trust has always been *the* pre-eminent problem in negotiation. As long as one cannot be sure about the intentions of the other side and its willingness to stick to an agreement, governments have proven to be reluctant to put all their eggs in the basket of negotiation as an alternative to warfare.

Negotiators tried to deal with this problem in different ways. They swore pious oaths and asked all the available gods to bless the treaties that they forged, but as this clearly did not guarantee any solid implementation of any holy pact, negotiators had to think of other ways, such as strengthening relationships, for example, or exchanging hostages, or, as in the seventeenth century, asking guarantors (like France and Sweden in the Peace of Westphalia in 1648) to help implement the treaty. In the eighteenth century, after the (in essence) multi-bilateral Peace of Utrecht (1713), the number of conferences multiplied in an attempt to stop wars ravaging the European continent and to make bargaining the dominant mode in conflict management. In the nineteenth century, starting with the multilateral Vienna Conference (1814–1815), the meetings between heads of states and diplomats became a systemic feature, but ongoing organizational structures were still lacking. This changed in the twentieth century after the devastating First World War (with the Paris Conference and the Peace of Versailles in 1919) and then the Second World War (Conference of San Francisco in 1945), by creating regimes of ever-better quality and strength, not only on a regional, but also on a global level.

Regimes, in transforming negotiations into increasingly rationalized tools, dealt with the problem of **trust** in an effective way. The development of trust is the third remarkable trend in the evolution of inter-state negotiation. Secrecy was a major issue in early European diplomacy, much more than today. Ambassadors had to be versed in publicly representing their monarchs as well as dealing with issues under conditions of complete secrecy. Being able to keep secrets, to be specialized in treason, maintaining a poker-face and the like were the qualities of the effective ambassador-negotiator (Colson, 2008; Berridge, 1999). Distances, time-lags, transportation problems and communication distortions all helped secrecy. There are of course still secrets nowadays in diplomatic negotiation and the WikiLeaks revelations pushed them to the forefront of the public debate (Rosoux, 2013; Meerts, 2013e). Modern authors on negotiation even plea for openness as a means to further the effectiveness and speed of negotiation processes, although it remains unwise to show your trump-cards 'in public'. So-called 'corridor work' (outside the conference room) and 'huddling' (small groups of negotiators talking informally in the conference room during a break in the formal session) are still an essential part of bargaining, also for cultural reasons. Open concession-making can lead to losing face, as negotiators might refuse to give in openly, only in informal sessions.

The fourth evolving element is **power**. The political context is changing. Power is more equally distributed today than in the past, even internationally (Cohen and Meerts, 2008: 155), although it is still more bluntly used in international relations than in national politics, at least in and between democracies. This clearly has to do with the evolution of human history, the development of democracy, creating more diffusion of power, and the protection of minorities and human rights. At the same time, the distribution of power among states has become less volatile, while intergovernmental and non-governmental organizations are on the rise (Van Staden, 1987: 14), helping to stabilize power or to diffuse it.

Non-state groups, including regional and terrorist organizations, are able to undermine the hegemony of the state, because weapons technology has been globalized so much that the state's monopoly of structural advantage is washing away. Nuclear states still hold this prerogative, but even they might be under attack in the future, as nuclear weapons are of

no avail against regional or global insurgencies. Furthermore, the idea that states should not be wiped out just like that, even with the rationale that the stronger state might use nuclear weapons in the future against other major powers, gave minor powers a rightful and legitimate niche in international politics, and therefore in international bargaining. Negotiation is situational and contextual. Major changes in the political context will influence the character and the effectiveness of international negotiation processes.

Can one therefore conclude that negotiation evolved into a more valuable and legitimate instrument in international conflict and international relations than other methodologies, such as, first and foremost, warfare? Indeed, *'Negotiation* becomes the prevailing method in conflict resolution and the prevention of further violent conflicts' (Gasparini, 2013: 77). However, this does not mean – at all – that warfare has lost its significance. And in many cases it is still easier to go to war than to open negotiations. Given the present levels of technology, regime strength, the instruments to compensate for lack of trust and the attempts to respect minor powers, it can indeed be hypothesized that negotiation evolved into one – if not the main – tool in international conflict management and resolution. With disasters and scarcity ahead, the world might well want to learn from the experiences of the past, to be better equipped in dealing with the future.

CHARACTERISTICS OF DIPLOMATIC NEGOTIATION

'Diplomacy is the best means of preserving peace that a society of sovereign states has to offer' (Morgenthau, 1967: 549), where 'negotiators seek to produce a *formula for agreement on the resolution of a problem,* which is then translated into acceptable implementing details', whereby the 'principle of justice' is its basic subject (Zartman, 2003: 33–34). Henry Kissinger sees diplomacy as a negotiation process in a legitimate context: 'Diplomacy in the classic sense [is] the adjustment of differences through negotiations [and it] is possible only in "legitimate" international orders. [Legitimacy] implies the acceptance of the framework of the international order by all major powers' (Kissinger, 1957: 1–2). René Albrecht-Carrié concurs: 'Diplomacy, the art of finding [...] accommodation, is timeless. But in the recent period [...] a narrower definition may be given of diplomacy as the management of relations among sovereign entities through negotiations conducted by the appropriate agents'. He adds that 'sovereignty, by its very nature, means the denial of any higher authority' (Albrecht-Carrié, 1970: 3–5). This exemplifies the main characteristic of diplomatic negotiation: to harmonize the interests of different states without an overarching framework that is strong enough to direct them to a common agreement.

Christer Jönsson and Karin Aggestam attempt to get more of a grip on the term 'diplomacy' by looking at its different functions:

This section on 'Characteristics' is based on Meerts (1999).

> First, 'diplomacy' sometimes refers to the content of foreign affairs as a whole. Second, 'diplomacy' might connote the conduct of foreign policy. A third connotation of diplomacy focuses on the management of international relations by negotiation. Fourth, diplomacy may be understood as the use of diplomats in a diplomatic service. Fifth, diplomacy, and especially the adjective 'diplomatic', often refers to the manner in which relations are conducted (Jönsson and Aggestam, 2009: 33–34).

To this they add diplomatic norms and practices facilitating conflict resolution: coexistence and reciprocity; open communication channels; shared language; commitment to peace; diplomatic immunity; and *pacta sunt servanda*, meaning agreements must be kept (Jönsson and Aggestam, 2009: 36–40). They also refer to diplomatic norms and practices that complicate conflict resolution: precedence problems; openness; constructive ambiguity and its consequences for implementation; questions of recognition before the process can start; and multilateralism and 'polylateralism' being problematic because of their complexity (Jönsson and Aggestam, 2009: 40–61). However, others nuance both the positive and negative effects of the diplomatic norms and practices as summed up by Jönsson and Aggestam.

For example, their last point is particularly important to conference diplomacy, or negotiating in the framework of international conferences. Winham, however, sees advantages in complexity: 'Complexity works in favour of reaching an agreement because the inherent lack of precision in the material makes it difficult to argue effectively against an agreement.' 'It pushes parties to adopt simplified logics and goals.' 'Complexity strengthens the position of the negotiator back home' (Winham, 1977: 87–114). Albrecht-Carrié agrees with Jönsson and Aggestam on 'the advantages of a common medium of expression, whatever it might be, Latin, French, or some other, have often been pointed out' (Albrecht-Carrié, 1970: 8), but he sees a gloomy future for this: 'It is one of the less attractive aspects of our contemporary hypersensitive nationalism that this aspect of universality has ceased to exist in our day'. Diplomatic negotiation is therefore a process of international negotiation characterized by diplomatic norms and practices that can have a positive and a negative effect on its function of coming to closure, but it is difficult to point out which characteristics will have a positive or negative impact on its outcome because of the contextual nature of the process.

Turning to the question of process, this study already referred to it in the last chapter: many authors have defined process in many different ways, but in the end the differences are not substantial. It is a question of wording. According to Zartman, process 'refers most precisely to the parties' exchange of concessions and compensations in an effort to reach a point of agreement that is favourable and acceptable to each' (Zartman, 2002: 9). At a later stage Zartman added 'construction', meaning reframing or restructuring the issues so that a new goal, which is of interest to both sides, will help to get things done.

Combining the views of Kissinger, Albrecht-Carrié, Zartman, Jönsson and Aggestam, this treatise's preface defined *diplomatic negotiation as an exchange of concessions and compensations in a framework of international order accepted by sovereign entities*. It is undeniable that shorter and more extensive definitions would be equally valid and useful. But for pragmatic reasons, the definition as formulated above will be used by this study as

an understanding of the term 'diplomatic negotiation'. The definition clarifies the difference between diplomatic negotiation and international negotiation. Through the acceptance of the legitimate framework and the application of diplomatic norms and practices, it assures some control over the process of international negotiation. This control is instrumental in assuring closure, or at least in enhancing the probability of successful outcomes and effective implementation of these agreements. The framework became stronger over time, thereby adding value to negotiation as an alternative to warfare. This study will now analyse the elements of diplomatic negotiation processes.

Conflict of Interest and Power Relationships

Depending on their interests, states can have contacts with each other in three different ways. If their interests overlap completely, all that is necessary is to sit around a table together to discuss how business should be conducted, based on mutual interests. After the common interests have been established, common strategy can be determined. Negotiation is not necessary, as there are no conflicts of interest. Conferring is sufficient. In this situation, the representatives of the states need to ask how the parallel interests can be maintained. Indeed, if both states have identical interests on certain issues, it is possible that after achieving the common goal, the interests of the countries involved may then become diametrically opposed. An example can clarify this. In cases where two resistance movements fight against one government, it is possible for them to work together to bring down the government that they oppose. If they succeed in bringing down the 'legitimate' government, there is a serious problem if each resistance group wishes to form the new government without the other. In this situation, they can only work together before their success; once they succeed, cooperation changes to competition with each other. They try to eliminate the other party and a civil war can result. It is different if the two rebel movements have complementary interests. In that case, cooperation after the 'successful overthrow' of the government can be achieved by forming a new coalition government. In other words, even in a situation in which states have only common interests, a difference needs to be made between the situation before and after carrying out a common decision.

The other end of the spectrum in relations between states is the situation in which there are only opposing interests, so cooperation is not possible because of the lack of common interests. It is a question of 'fighting' or 'fleeing', of forcing the other party to agree, in the event that one side is stronger than the other and the issue of disagreement is a priority. One side can withdraw from contact because there is not sufficient power to force the issue, or because the problem in question is not so important. A difficult situation arises if a state does not have sufficient power to force an issue, but that issue is very important. In that case, it is important for the state to try to build up power quickly enough to lead to the desirable result. When there is a lack of sufficient common interests, the power relationship between states is the factor that determines whether or not the differences can be resolved by force.

Negotiating power is determined by many factors, both internal and external (Frankel, 1969: 118–128; Northedge and Donelan, 1971: 61–64; Zartman and Rubin, 2000b: 3–20; Mearsheimer, 2001). The first question concerns the internal balance of the state that is negotiating. The position of a state will be undermined if that country is torn by internal

differences of interest and opinion. Then comes the issue of external dependence: the more independent a state is, the greater its power. These internal and external factors determine the structural power of the state. In addition, there is the specific power of the country, which includes the power a land can bring to bear on a particular dossier. It is clear that countries have comparative power advantages or disadvantages, depending on the subject in question. For example, even though Luxembourg is a small country, because of its strong banking position, it is a financial power within the European Union. Power is not an unchangeable variable and is not merely dependent on the strength of the state. The negotiator can also influence the balance of power by functioning more or less effectively (Mastenbroek, 1989).

The negotiator can try to influence the balance of power to his or her advantage in different ways. One method is to obtain the most information possible about one's own position, about the position of the other party or parties, and about parties who are not included in the negotiation but who could become involved. This knowledge is necessary to determine what alternatives exist for the negotiations in question. Increasing the number of possible alternatives is another way to enlarge one's own negotiating power. Those who have no alternatives are at the mercy of the other party or parties. A well-qualified negotiation delegation, in which participants combine good knowledge of dossiers along with good negotiation skills, can also contribute to strengthening the state's position. In addition, coalition-forming is very important. Given that coalitions are easier to form in multilateral rather than bilateral negotiations, it is best for the less powerful states to try to negotiate with a more powerful state in a multilateral setting. Meanwhile, the more powerful state has a distinct advantage in bilateral negotiations. The choice of negotiation forum is thus of major importance in answering the question about in what context the negotiations should be held, which is also the reason for the pro-supranational inclinations of most of the small member states of the European Union.

The means that can be used to force the other side to agree in a situation where there are no common interests and where negotiation is not an option vary from political and economic pressure to use of violence. There are many examples of states using force, even when there could have been attempts to create common interests in order to avoid the use of violence. There are also situations where there are common interests and negotiation could therefore be used, but where one of the parties prefers to use force, because it feels that force can lead to better results. Examples such as the recent conflict in Chechnya and the Vietnam War show that there can be misjudgement on the part of the state with the most power. The more powerful party may feel that it can use all of its structural preponderance in the conflict, but that is often not the case. The specific power that the structurally weaker opponent can project can often be very effective, whereby the weaker party can achieve its goals in relation to the issue. In many instances, this can only be maintained in the short term and, at the most, the middle term. This sort of issue can be seen in the relationship between Israel and its Arab neighbours, and between the People's Republic of China and Taiwan. How long can these potentially weaker parties keep the balance of power in their favour, or at least in a stalemate? When might there be a turning point and when is it the best time to act? This is one of the most difficult decisions for diplomatic negotiators: when should they make concessions and to what degree? If they

are too early, they will give away things they could have kept, and if they are too late, they will lose more than was necessary.

The temptation to use superior power and to avoid negotiation is sometimes too great. That does not lessen the fact that the use of physical power is increasingly difficult in a world in which there is so much interdependence. The rise of asymmetric warfare, the spread of modern weapons technology, and the increasing 'refinement' of guerrilla tactics and terrorist methods make it also less appealing for those with superior power to use it, because the 'weaker' party often has access to technologically highly developed weapons that neutralize the stronger party. This so-called 'mosquito power', whereby the 'weaker' party takes action against a weak spot of the 'stronger' party, thereby negating the power of the stronger, plays an increasingly important role in conflicts (Zartman and Rubin, 2000b: 271–290).

Inter-state Negotiations

The third situation is that of both common and opposing interests between contending states. In this situation, negotiation is a usable means to arrive at solutions for mutual problems. In situations where the common ground is large and the differences small, negotiations can be without problems, relatively speaking. The parties can meet with openness and the approach of negotiating in openness can be used (Fisher, 1971). This is naturally more difficult in a situation where common interests are limited and opposing interests are great. In such cases, there is competitive rather than cooperative negotiation, and negotiations will be conducted in an antagonistic atmosphere. To build up trust in a situation plagued by distrust requires much skill on the part of the negotiator. In this kind of situation, such as in Bosnia, the question is whether or not negotiation is a usable method.

It is all too true that there are many situations where 'negotiations' take place, but where questions can be raised about whether or not this is the best procedure. The discussions do not have to be successful in the sense of solving the existing problems. The discussions serve other purposes, such as maintaining contact between the parties in order to make possible more successful negotiations in the future. The opposite is also sometimes true, for example when people do not really wish to negotiate, but refusing to negotiate would make this very clear. Thus, to confuse the issue, parties 'negotiate' to hide the fact that they really want totally different results than what the 'negotiations' seem to be trying to achieve. Well-known examples of this smoke-screen tactic took place in Munich in 1938, and in the meeting between Egyptian President Hosni Mubarak and Iraq's Saddam Hussein about Kuwait, just before Iraq attacked Kuwait in 1990. In the latter case, the Iraqis pretended to be interested in a peaceful solution in order to hide their real plans. There are also 'negotiations' where neither party wishes a solution. They want the negotiations to fail in order to prove to public opinion that other actions are necessary, such as the further strengthening of military forces. Make-believe negotiations can also serve to acquire information that might otherwise be difficult to get, or to embarrass the other party by breaking off discussions, etc.

Real negotiations can only occur if countries have common interests that they acknowledge. In many instances, an outsider can see that countries have common

interests, while the countries themselves cannot or do not want to see this themselves. Even if they acknowledge the common interests, they may view the issue at hand as less important than issues that they consider higher priority. That higher priority, however, may not be seen as such by third countries. For example, European Union countries considered avoidance of the destruction of lives and infrastructure in Bosnia in the first half of the 1990s as much more important than the nationalistic desires of the fighting parties, while those fighting placed their feelings of national unity and desired national borders above the safety interests of human beings and property. The same point may be illustrated by the attitude of the People's Republic of China, which for a long time considered its claim on Taiwan as more important than the risk of damaging its own economy by increasing tensions in the Strait of Formosa.

Negotiations are only useful, of course, if it is in the interest of the involved countries to solve their problems in a peaceful way. One important point is that it is not always necessary to have mutual overlapping interests at the beginning of the negotiations. These mutual interests can be developed during the negotiations by bringing up new discussion points and trying to create common interests by combining different questions: the so-called 'package deals' that can help lead to effective negotiations. The more parties that play a role and the more subjects that are brought into the discussion, the bigger the chance of creating a common basis. The European Union could never survive without package deals on a daily basis. From a certain but insufficient overlapping common interest, negotiations occur until it is clear that no solution will result. Attempts are then made to combine different wishes, sometimes on totally different topics, so that progress can be booked. By definition, these trade-offs take place at the very end of the negotiation cycle, because it must first be clear what the unsolvable differences are, and which wishes and offers can be coupled together. This requires a negotiator being capable of analyzing complex situations and having the ability to come up with creative solutions. A good network is essential in such a situation. The creation of a good working atmosphere is a requirement in order to make progress in regard to the subject. These skills are very important for a diplomat. This is the real contribution of diplomacy, and this is where the specialists of other departments need the skills of the diplomats of the foreign ministry.

Although the term 'negotiation' can be defined on the basis of common interests between states, the term 'common interests' itself is not always simple to explain (Berridge, 1998). In the first place, it is often not simple for the parties themselves to determine what their common interests are. Interests are often a sum total of smaller partial interests that can contain opposing factors. In general, the instructions that diplomats receive are the result of *internal negotiations* and are often a compromise that holds together because of vagueness. However, if the mandate is not the result of extensive internal negotiation or consultation, there is a great chance that the results of negotiations with the external party will be unacceptable to some internal groups. This can lead to very painful confrontations that damage the negotiation partner. If the result is not acceptable to one's own supporters, what kind of trust can the external party have in future negotiations? Without legitimacy, good negotiations are impossible and this legitimacy is based largely upon internal consensus.

As well as the issue of the difficulty of defining *the* interests of a country in a certain situation, the perception of those interests plays a role (Berridge, 1998). How much of

a priority is a particular interest? What concessions are possible? What is negotiable? Especially those emotions tied to interests can create obstacles in the path of successful negotiations. Emotions in the negotiation process cloud the perception of the party's position, especially because the opposing party often cannot understand those emotions. Insight into business issues can be shared, whereas understanding emotions in a negotiation process is more difficult. The basis of conflicts is often a disagreement about values and norms, rather than about interests. Ethnic, religious and linguistic differences are used to mask interests or to support them, while at the same time they are obstacles to successful negotiations and their closure (Anstey and Meerts, 2012: 376–390). They are not negotiable – a Protestant and a Muslim cannot negotiate about their religion. Such differences can make an 'objective' analysis of interests difficult.

The Diplomat and Negotiation Behaviour

Negotiations are carried out by people who usually act for organizations. Diplomats, the official representatives of their countries, bring all of their country's power and prestige to the negotiating table, putting the negotiations under extra pressure, but also bringing risks with it that must be limited. Serious loss of face for diplomatic negotiators can result in serious loss of face for the country, which can lead to unforeseen consequences. After all, the representative was not only the representative of his emperor; he was, in a way, the ruler himself. This is still the case. The ambassador is not only the representative of his or her state; he or she personifies it. This is why representatives are listened to, but some of course carry more weight than others. Their influence, which is also determined by their skill, is still largely based on the power that they represent.

The diplomatic negotiator is protected by many rules and procedures, which see to it that no one state can be raised above the other. The Vienna Convention of 1961 put into black-letter law the accumulation of European practices, norms, values and regulations assembled over the centuries (Berridge, 1995: 19–31). In addition, a 'diplomatic culture' has developed, in which diplomats from very different cultures can interact with each other in a 'safe' manner. The great contrasts that cultural differences can cause are in this way reduced to acceptable proportions. It can be argued that differences in negotiation style have a more limited influence on the negotiating climate in diplomacy than in international business, unless the diplomat is planning to use these differences as a tactical weapon. Research has shown that – perhaps in contrast to popular belief – substantial cultural differences exist among negotiators from EU countries, but that such differences do not create any real barriers (Meerts, 2004). On the other hand, individual character-trait differences can damage the atmosphere. Differences in negotiating skills will naturally always have influence on the outcome of the negotiations; there is also a visible increasing difference in training techniques.

The difference between the official representative of a state, whether this person is a diplomat or an internationally functioning civil servant, and the negotiator who represents a company or other group, is based on the formal character of the negotiation mandate of the first. The instruction that the diplomat gets as a negotiator carries the status of the state. This almost emotional dimension of the empowered negotiator of a country is often an obstacle in searching for and finding the most rational and effective solution for

differences. After all, in addition to the 'honour' of the country, issues such as public opinion, the political position of ministries and parliament and, sometimes, military leaders play a great role. The political dimension, with its emotional aspects, often leads to negotiation results that, mildly stated, are 'unbalanced' and 'not carefully thought out'. This can be an advantage or disadvantage for the negotiating state. Deliberately vague and contradictory agreements often provide a solution, when a crystal-clear and straightforward statement would lead to great resistance from parliament and public opinion.

Diplomatic negotiators not only have the task of problem-solving; sometimes their task is to conceal problems, to introduce uncertainty and ambiguity instead of clarification (Friedman, 1995). This has the consequence for negotiations that issues are continually pushed to the future and that finding solutions can be seen as untimely and even harmful. The interest of the state often requires negotiations to be strung out and solutions to be delayed, because the existence of the current unstable situation offers an advantage to one or more of the negotiating states. This can be seen in Cyprus over the past decades, where different groups within the Greek and Turkish communities have no interest in eliminating the island's current partition. In other situations, an external power may want to delay a solution, because its influence would be limited. This is again the case on Cyprus, where the lines clearly go back to Greece and Turkey. Restoration of the *status quo ante* would lessen or remove the influence of both countries in Cyprus, although such a revision is further away than ever, given the outcomes of the referenda, the stagnation of EU enlargement and the euro crisis hitting Cyprus in 2013. Such tactics are often visible in bilateral negotiations, but in multilateral negotiations it is very difficult to determine why progress is not being made. There can be 'legitimate' reasons because a state binds different issues together in order to tie progress on one issue to progress on another; forced delays on one point may encourage solutions on another point. It is also possible that it is in the interest of all participants to frustrate progress, given the great costs that decisions may bring in the short term, even though it is clear that long-term damage will result to these states. Negotiations about environmental issues are a good example of this. Countries agree about the damage caused by air pollution, but if the changes required for out-of-date industries cost too much, a country may feel little enthusiasm about taking the necessary expensive and far-reaching steps.

Progress in inter-state negotiations depends on a number of factors: the mutual dependence of the countries involved; the quality of their political relations; power relations between the states; and the priority that states give to the subjects under negotiation. In addition, the skills and prestige of the diplomats play a role, but they must still operate within the four named parameters and must thereby use the negotiating space to the best of their ability in order to find a solution or to undermine the negotiations. It has become fashionable for effective negotiators to strive to maximize or optimize their goals to create a 'win–win' result. If the theorists have their way, this is what negotiators should strive for. And indeed, that is the best result for negotiators. But is that always realistic? In many countries, preference is given to a negotiation method that does not lead to an optimal or even a maximum result. Negotiators are prepared to accept a loss in the event that the other party suffers an even greater loss.

The negotiation strategy of states is, in part, determined by the state's structure and the hierarchy within the ministries. Differences influence the process of negotiation and

its outcome, and can make communication difficult. This explains why there has been so much discussion going on for some time about a certain harmonization of the structure of the different ministries of foreign affairs, up to the point of proposals for radical change (Neumann, 1997; Coolsaet, 1998). Diplomats who negotiate for a federation, such as the Federal Republic of Germany, often have to deal with a long negotiation process within their country, whereby their instructions often arrive late and their position is inflexible. Centralized countries with a clearer command structure, such as France, can operate much more quickly, but the basis of acceptance of the decision taken is sometimes too narrow. This may lead to decisions that will be rejected by segments of the population, with strikes and boycotts as a consequence.

In Conclusion

International negotiations are being nationalized and national negotiations are being internationalized. This chapter noted that the domain of inter-state relations and a country's carefully separated area of internal affairs are beginning to merge with each other. If it is no longer clear where the demarcation lies for the international dimension, how can the diplomat's position as the monopolist in international relations be maintained? In this way, the diplomat loses his prerogative as an international negotiator. He or she is in competition with colleagues (departmental civil servants) who often know more about the specialized subject than the diplomat. The increasing complexity of international affairs increases the influence of the non-diplomat expert. The diplomat maintains her or his function as a generalist who is necessary for coordination. Improved means of communication make it easier for the civil servant to negotiate directly with his or her counterpart in another country. The same is true for ministers and heads of state who do business directly at summit conferences, sometimes ostentatiously closing out their assistants. Coordination is therefore often no longer needed or possible. In summary, the role of the diplomat as negotiator is being undermined. Inter-state negotiation is increasingly 'inter-civil-servant' negotiation and less often diplomatic negotiation – that is, if people view diplomatic negotiation as the process of give and take in which the actor is generally a member of the diplomatic service.

Above all, within the European Union, there are visible processes that threaten to marginalize the diplomat's role in relation to the negotiator of the specialized departments. Also outside of the Union, there are developments that threaten to diminish the role of the diplomatic negotiator. In addition to the civil servant, there are other competitors. The democratization of society leads to increasing interventions by politicians and non-governmental groups and organizations. This leads to greater openness and increases the role of the media and journalists as players in the international arena. Companies also play an increasing role in international affairs, certainly now that there is a higher priority placed on economic developments. The businessman and his interests can no longer be ignored by diplomacy. For example, the effort to increase exports has become a larger part of the diplomatic task. Saner describes and analyzes the divergent post-modern diplomatic roles in the economic sphere of representatives of states and of non-state actors (Saner, 2009: 9). Commercialization, privatization, democratization, politicizing, professionalizing,

increasing interdependence, improved communication, improved transport, greater security risks and the increasing number of international issues: in short, the quality and quantity of the international questions to be negotiated is on the rise.

Inter-state negotiations are thus less often synonymous with diplomatic negotiations, and international negotiations are less often the same as inter-state negotiations. The state has lost influence, and within the state, the diplomat. Paradoxically, because of the increase in importance of diplomatic negotiations, a more modest role is set aside for the diplomat. It would perhaps be better to speak nowadays about 'inter-state negotiations' – that is, negotiations in which diplomacy is only one of the players. In addition, it can be concluded that inter-state negotiations will have competition from an increasing number of other forms of negotiation, while the state-like character of negotiations between countries will lessen.

Does this mean that the roles of diplomacy and of the state are becoming so marginalized that diplomatic/inter-state negotiations will lose their meaning as a theme for study and training? The answer is just the opposite (Flemish Foreign Affairs Council, 2013: 1; *Modernisering van de diplomatie*, 2013). The study of, and training in, diplomatic/inter-state negotiations are increasing, just as the world is becoming more internationally oriented, just as international developments have an increasing influence on the internal development of states, and just as the increasing complexity of international developments bring greater pressure on the ability of states and their representatives to create order, without which further peaceful development is not possible. It is precisely in these circumstances that the role of the diplomat as coordinator, shaper and negotiator – in short, communicator – will gain in significance. The tasks of the modern diplomat of the twenty-first century will be difficult to compare to that of the twentieth century, not to mention of the nineteenth or eighteenth centuries.

The unpredictability of diplomatic negotiations and their outcomes is problematic. Unpredictability is bad for stable relations between states and is bad for effective negotiations. It is up to the diplomat to demonstrate his abilities and to improve predictability. In order to do this, the diplomat must be formal and flexible at the same time. He or she must maintain relations and continue to work precisely in those instances in which the conflicts threaten to become the most serious. Power must be used in situations in which states consider themselves inviolable, which calls for great knowledge of the dossiers. Diplomats work in extremely complex situations, making it necessary for them to have a lot of professionalism and general skills and knowledge. In negotiating, which by definition is a paradoxical method because of competitive and cooperative elements at the same time, the diplomat is confronted with difficult situations for which an acceptable solution must be found.

Diplomats will be inclined to take into account the consequences of their decision making in the future: 'diplomats involved in international bargaining are almost always less concerned about the issue immediately at hand than about the impact of the settlement on resolving future issues' (Ray, 1998: 143). Furthermore they 'are anxious to avoid giving the impression that they make concessions easily' (Ray, 1998: 145). Daniel Druckman highlights this problem by making a distinction between settlement and resolution: 'the former emphasizes getting deals; the latter promotes longer term relationships' (Druckman, 2013a: 201). Seen from this perspective, diplomatic negotiation is still a useful tool in conflict management, but it might be an obstacle to conflict transformation.

CHAPTER III

Process and Context

CHAPTER III: PROCESS AND CONTEXT

This chapter will deal with the context of the diplomatic negotiation process, not only because of its impact on the start, the flow and the closure of the process, but also because of its function in enhancing the utility of diplomatic negotiation in comparison to other instruments of conflict resolution. The chapter will first focus on the boundaries of negotiation as a function to channel the process in the desired direction. The role of six boundaries will be analyzed: geography; system; needs; resources; regulators; and time. The second part of the chapter will study negotiation as a tool to provide order to international relations and the role of regimes therein.

Trying to understand a negotiation process without its context is not helpful in explaining what happens, why and when. Despite this, most negotiation literature tends to focus exclusively either on procedure and process, parties and people, or positions and products. Of course, to take the environment of these phenomena into account complicates matters, touching, as it does, on the tension between vertical and horizontal research. If one digs into the vertical axis, it is difficult to include much of its horizontal context. The same dilemma is faced in negotiation itself, with the risk of the in-depth working groups installed in order to bargain on a given issue losing touch with related questions that are being dealt with in other committees. A good compromise might be reached, but the trade-offs will not necessarily be used. So-called package-dealing cannot be done and optimality will not materialize.

The famous Chinese strategist Sun Tzu, already referred to in chapter I, stated that strategy is to change a situation in such a way that it will be ripe for victory (Chung, 1991: 12). In other words, you cannot solve a problem without changing its context. He meant that conflicts arise out of a certain situation and can thereby not be solved unless one tackles the environment producing the problem. In negotiation terms, this would mean that not everything is negotiable right from the start. In order to reach a solution, one might have to modify the context and thereby create the conditions needed to start the process of exploration, bargaining and deciding. The idea of the 'mutual hurting stalemate' might be of some help in timing the conditions for negotiations to start, since getting the people around the table is often the hardest challenge we face, but it is not applicable in every cultural context. However, the hypothesis that one has to suffer in order to understand that change is necessary may well be a typically Western rationalist notion. There are cultures, for instance, where suffering is the highest good. The hero is the one who suffers. In such a cultural context, suffering is more likely to aggravate the problem of negotiation than to resolve it.

Structural power asymmetry no longer guarantees victory (if indeed it ever did). Nowadays, the weak have missiles and, if needed, use the adversary's planes to destroy the towers of the mighty, although 9/11 seems to be an extraordinary 'accident of history'. One might turn the reasoning upside down: in the new millennium, it is easier to control a state that is well structured than to dominate a failed state, because there is nothing fit for control. Somalia is out of control, for example, and the world's most modern warships

cannot put an end to piracy by tiny boats. To win a conventional war in Iraq was not much of a problem, but to control the country after the state's structures broke down, that was a problem. To chase the Taliban out of Kabul has not been too difficult, but who will be the winner in Afghanistan in the end? What has long been recommended but constantly neglected is now finally going to happen: serious talks with the Taliban about power-sharing.

The more unstructured the opponents, the more difficult they are to control. In negotiation, this can be both a problem and an opportunity. To be ambivalent until the very end comes with the risk of failing to reach any agreement, but to remain ambiguous during most of the process might be very useful in keeping options open. The more options one has, the more alternatives and the more process power can be generated. This is illustrated by British negotiation behaviour (Hemery and Meerts, 2006). The British are extremely good at keeping their hands free as long as possible, while they consistently work in the direction of a 'fair' solution, being at least very fair to themselves. They combine flexibility in the process and towards the people with toughness in defending their interests. They are capable of acting like that because this tenet of behaviour is engrained in their culture and language. Some negotiations can only end in agreement if constructive ambiguity is involved: parties can interpret the end result in their own way and will therefore agree. Depending on the situation, uncertainty can therefore be an asset or a weakness. For the weak, it is generally a strength, because it enhances their room for manoeuvre, while it restricts the effectiveness of their opponent with more powerful resources.

Weaker parties can be winners if they use the context most favourable to them. A good example is the accession of the Republic of Cyprus to the European Union. The fact that the Greek part of Cyprus wanted to become a member of the European Union was widely seen as the only incentive to be used to reunify the Greek and Turkish parts of the island. The Turkish Cypriots seemed to be ready for unification, as the referendum in 2004 on a UN-sponsored solution showed (https://www.cyprus-conflict.net/chronology.html). The majority of the Greek Cypriots, however, were not in favour of reconstructing a union with their countrymen in the north, but it was hoped that desire to be an EU member would wither away the Greek Cypriots' worries. The EU, for its part, was of the opinion that a divided island with a strong military Turkish presence would keep the island unstable and might therefore create problems for Europe. The Greek Cypriots in the south were of a different opinion, however, as a divided island keeps the Turks out of the government and the economy – as the north is poor and the south is rich – while many landowners profit from the separation. The Republic of Cyprus used the context to be the winner. It took the opportunity of the EU being in an enlargement process with eleven other states as well. The Greek Cypriots managed to get their compatriots in Greece to threaten to veto enlargement with Central Europe if the EU would not initiate negotiations with Cyprus. As Central Europe was – especially for Germany – of much more importance to the EU than the accession of Cyprus, the Republic of Cyprus could sneak into the Union as a full member. The opportunity to reunite Cyprus in a peaceful way was thus lost, affecting not only the Cypriots on the island, but also those in the diaspora (Hampson, 2012: 120).

Another example of context change is the European Union itself (Jönsson and Elgström, 2005: 1–5). The bilateral French–German relationship of the second half of the nineteenth and first half of the twentieth century did not foster stability, let alone – to put it

mildly – an effective negotiation process for solving their differences. The world wars were needed to make the Europeans understand that this bilateral process should become a multilateral process, or, even better, supranational. In themselves, these crises were not enough to make the European Communities emerge. The threat to Europe's existence by the Soviet Union and the willingness of the Germans to admit responsibility for committing the atrocities of the Second World War – combined with an internal balance between the United Kingdom, Germany and France on the one hand and the middle and smaller powers on the other – made for a context change that allowed negotiation processes to be the most effective tool in governance. Context and content became clearly connected, thereby optimizing the effectiveness of the policy tool called negotiation. This transnational negotiation process shaped the institutions of the European Union, while the institutions channelled the processes. In that sense, the European Union might be very much more about these processes – bringing together diplomats from different nations in an intense ongoing diplomatic negotiation – than about the content. Perhaps the process is of more importance than the question of what the end-stage of the European Union will be. It is more about the road itself than about the targets envisioned.

The importance of context change for effective governance and negotiation is something that was understood long ago by the Swiss. Switzerland is a potentially weak country without natural resources, land-locked, with two different religions and four languages, which had been one of the poorest European regions in the past, but which is today one of Europe's richest countries. The light, however, is often seen when it is too late. During the Paris negotiations in 1919 following the First World War, the French minister of trade and industry suggested not occupying the German Rhineland and Saarland, but creating a joint regime where the French and Germans would collectively decide on the coal and steel in these areas. However, the chief French negotiator, Georges Clemenceau, rejected the idea. The minister of trade and industry had a young assistant, whose name was Jean Monnet (MacMillan, 2001). Jean Monnet, who became one of the most important founding fathers of the European Union, foresaw the disastrous consequences of the decision to exclude Germany from the Paris negotiations and to decide to punish the Germans in such a way that they would become resentful. He therefore opted for cooperation, but he could only successfully push this idea after the Second World War, 30 years later.

BOUNDARIES IN BARGAINING

Boundaries help to clarify a concept or object by marking its limitations. Actually, the word 'definition' contains the Latin word for boundary. The first part of this chapter focuses on the positive and negative effect of boundaries – meaning limits or constraints – in bargaining processes. Boundaries can serve to define, promote and constrain the bargaining process. Boundaries are both an obstacle to – and an opportunity for – effective negotiation, and

This section on 'Boundaries in Bargaining' is based on Meerts (2011a).

thereby to its give-and-take component: bargaining. Negotiation is the broad concept of the process of planning, exploring, parking, trading, deciding and implementing in situations of opposing and converging interests. While negotiation is the broad process of giving something in order to get something, bargaining can be defined as the nucleus of this interaction. It is thus the heart of the negotiation process: the phase of compromising and compensating, of trading concessions and emotions. These processes of conflict management and resolution are not unlimited. They proceed in a distinct setting, a recognizable format. This section is about the interconnectedness between process and structure, flow and ebbing, river and shore. It focuses on the importance of the context for the process and its positive and negative impact.

As already mentioned, a boundary is a constraint and an opportunity in the process. Delimitations in negotiation restrict the freedom and flexibility of negotiators, but they can also be tools to push things forward. This chapter will distinguish six boundaries:

1. Geographic: borders between states and state entities, the issue of sovereignty;
2. Systemic: the strength of states and international organizations;
3. Needs: the role of interests and positions;
4. Resources: the capacity of people and their tools;
5. Regulators: the significance of rules and regulations, norms and values;
6. Time: short-term versus long-term perspectives and projections.

This analysis departs from the assumption that diplomatic negotiation cannot be a viable tool in international relations if it is not channelled in a certain direction by boundaries, provided that the positive aspects of boundaries outweigh the negative.

Geography: Bargaining Borders

Borders are not only an important factor in international negotiation processes, but they play an important role in organizing the world. They distinguish nation-states from each other and they facilitate the proper functioning of representative governments and the rule of law (Baudet, 2012: 239). Geographical borders were negotiated in the two classical ways to solve a bargaining problem: compromise, or compensation. Compromise in the sense of a negotiation focusing on the border and trying to change its course will be called micro-border-bargaining here (in the sense that diplomats focused on the border and bargained its change). Macro-border-bargaining would be the swapping of whole territories and people from one ruler to another, compensating for the loss of one territory by gaining another. Swapping people was done between Greece and Turkey after the First World War, while India and Pakistan swapped Hindus and Muslims during Partition after independence in 1947. There are many examples of land trade-offs, such as the loss of Swedish Finland to Russia in 1815, when the Swedes were compensated by being given Norway, which had been ripped from Napoleon's ally Denmark. Another example might be newly proclaimed King William I of the Netherlands gaining Belgium and Luxemburg in 1815 in order to strengthen his country against France, while losing the lands of his ancestors in Germany. Interestingly enough, the British hung on to their possessions in Germany until the First World War, which led to most interesting dynastic complications (Davies, 2011: 541–573). The Second World War put an end to this second mode of border bargaining,

although Yalta in 1945 can be seen as the last negotiation when major country-swapping was practised. From a negotiation point of view, this limited the range of options available to diplomats and those who instructed them. It removed opportunities for integrative win-win bargaining and strengthened the tendency to see border negotiations as distributive, win–lose processes, or even lose–lose situations, as in the former Yugoslavia.

The border question implicates sovereignty, and the autonomy of the people within the delimitations of their territory implies sedentary units, or states. The transition from societies of hunters to cattle-herding, to agriculture and craft, and trade in and between enlarged settlements like cities, created the prerequisites for states. In the process, more or less fixed borders emerged, demarcating the more or less absolute power of the rulers over people and palatinates. Within those borders to be bargained, (semi-)sovereign blocs came to flourish. Negotiations between these blocs became extremely tough. Unlike negotiations on internal matters, when the ruler could always force an outcome if internal haggling came to a grinding halt, negotiators were much less in control of external affairs. If anything distinguishes national and international negotiation, it is the measure of control over the process. While internal bargaining has more assured outcomes, bargaining across borders is characterized by less-assured agreements, both in creating an effective process and in securing implementation of the promises made to the other party.

Regime-building is to a large extent the answer to enhanced control in bargaining across geographic borders (Spector and Zartman, 2003). Perhaps it is not a coincidence that the growth of multilateral international organizations in the twentieth century is in tandem with the loss of opportunities for boundary swapping and the growth of packaging. Package-dealing is a hallmark of multilateralism. To dispense with the tool of country-swapping, compensating for territorial losses narrows possibilities for negotiated solutions. Package-dealing in a multilateral setting might be a solution. Countries can now swap issues instead of land. Rising interdependency implies a loss of sovereignty, both inside and outside international regimes. Geographic, and thereby political, boundaries are losing their significance in global governance. In the very long run, the border problem in bargaining might thereby wither away. Nevertheless, one should not be overly optimistic about the possibilities for settling geographic boundary problems through negotiation instead of violence, as shown by the annexation of the Crimea by the Russian Federation in March 2014. Border wars are less frequent nowadays, but they are still looming behind the horizon: '*Ces guerres frontalières entre régimes jusqu ici sont peu nombreuses, mais leur présence est visible juste en dessous de l horizon*' (these border wars between regimes are by now less frequent, but just behind the horizon they are still visible) (Zartman, 2009: 215).

However, geographic and sovereignty borders also had a positive impact on the negotiation process. Mandating diplomats has been a more or less transparent process. Ambassadors were instructed by the sovereign to negotiate on the external dimension. This is now, however, becoming less clear, as a horde of ministries, parliaments, companies, trade unions and other pressure groups are mingling in the process of mandating, just as national and international spheres are merging. Mandates are often unclear, as they are a compromise by themselves. Add to that the progress in means of communication, as well as the impact of specialized ministries entering the external bargaining platforms, and loss of autonomy for diplomatic negotiators comes to the fore. This in turn might have

a negative impact on their ability to be creative in the process and to act in a situational manner. As negotiation is context driven, and thereby by definition situational, the phasing out of geographic and political borders could have a stifling effect on negotiation navigation. This would in turn diminish the effectiveness of negotiators and thereby of bargaining as a tool in conflict resolution in global governance. Geographic borders are not, however, the only borders in international negotiation processes and the evolvement of other delimitations will also have consequences on bargaining. Although there are many limitations of a non-geographic nature, only a handful have been selected in this analysis, namely systems, interests, resources, regulators and time.

Systems as Boundaries in Bargaining Processes

The structure and dependencies of the international system create obstacles and opportunities in bargaining across borders. Intergovernmental and non-governmental organizations, states as well as regions, political parties and private sector companies will limit and enhance the opportunity for successful negotiation processes.

An important function of international and supranational organizations is to compensate for lack of trust. As has already been pointed out, trust is essential but not often assured. Exchanging family members does not work anymore, as royal courts are no longer the focal point of modern power structures. Leaving garrisons behind as a guarantee for implementation is also no longer done. Military bases nowadays have a more external function. The days of the Tatar or Polish garrisons in Moscow are long gone, as is the Dutch barrier of fortresses in what is now Belgium against a possible surprise attack by the French, which also acted as a control mechanism over the policies of the Spanish and Austrian rulers of the Southern Netherlands. International regimes will have to do the job instead. They create a more or less tightly-knit grouping of states that, if they do not want to live up to their international pledges, will be forced to keep them. Of course, if the international organization is weak, it will be less successful than if it carries supranational authority. In other words, the more interdependency between states, the more an effective negotiation process is needed, and the stronger the international fabric has to be.

Political reality, however, cannot be overlooked. Powerful countries cannot easily be constrained within the limits of international regimes. It could not be done in 2003–2004 when the French and Germans violated the three per cent budget limit prescribed by the European Monetary Union. Neither did it work when the United Nations Security Council could not reach agreement to use military force to overthrow Saddam Hussein in Iraq or Bashar al-Assad in Syria. Yet international regimes do have an important function in channelling bargaining processes in such a way that their efficiency and effectiveness will be optimized (Spector and Zartman, 2003). Without these organizational boundaries, there can be no effective processes, but these limitations also, of course, might have negative effects, such as inflexibility through over-bureaucracy.

To take the argument one step further, governments have tried to overcome the trust – and partially also the power – imbalances by creating ever-closer cooperation. Attempts were made through regular diplomatic bilateral meetings and the first diplomatic conferences with more than two parties involved, as well as the foundation of long-lasting

conference frameworks, bringing the dimension of time into the picture. Long-term stability created opportunities for concession-making on a long-term as well as a short-term basis, thereby diminishing the prisoner's dilemma factor in finding common ground between opposing short-term interests.

Needs: the role of interests and positions

Parties take positions connected to their needs. These positions will normally be more radical than the interests that they have to defend. Depending on the situation, these positions will be more or less exaggerated. In ad-hoc bargaining, such as in the bazaar, more polarized behaviour can be expected. This will often be a one-time deal with a serious shortage of trust and information on both sides. There is also power asymmetry, which will have to be dealt with as a boundary to effective negotiation.

The negotiation problem is the fruit of the situation into which it has been born. Without changing that context, the problem cannot be solved through bargaining, as it will always pop up again until external incentives change its environment. A customer who has to choose from several carpet shops has a better power position than the merchants. By getting the buyer into the seller's shop, the context will change, however, in favour of the carpet expert, who can now use his 'best alternative to a negotiated agreement', being more beautiful and therefore more expensive rugs. The seller can now deploy his strengths, composed of alternative carpets, plus more expertise about the quality and price, and more effective bargaining skills.

There is a cultural element here as well. In some cultures, excessive first bids will not prevent buyers and sellers from concluding a successful agreement, while in others it will. Experience in training diplomats and civil servants, suggest that the perception of negotiating parties on process, procedures, positions, power and products (in the sense of agreements) is indeed important (Meerts, 2014). Perception determines reality. In some cultures, perceptions are important but are open to nuance and change, for example through neutral media. In others, perceptions are inflexible and static. People might be used to haggling and therefore would not hesitate to use distributive bargaining (and indeed may actually enjoy it), while others are accustomed to fixed prices and do not like the risk of the give and take (Faure, 2009: 311–314). It should be noted here, however, that flexibility in market haggling does not necessarily mean having an open mind-set on negotiation processes between states. To the contrary, the reverse situation has been observed: the majority of young diplomats from 'haggling cultures' have a tendency to be very positional/inflexible in inter-state bargaining. Those from cultures where horse-trading is not part of day-to-day life, and where approaches to negotiation are more rational and less emotional, will be inclined to be more relaxed in inter-state processes. This is a general statement, of course, and there are many exceptions to the rule (Meerts, 2014).

Some cultures see concessions as tools that can be used to bridge the gap between positions and to move in the direction of uncovering the real needs, thereby finding synergy between the parties – and if needs be, to create synergy and Zones of Possible Agreements between the actors through trade-offs (Peyton Young, 1994). In other cultures, however, a concession might be seen as a pure loss, even if this could be more

than compensated for by certain gains. To offer something will be seen as loss of face, not in the marketplace, but in a negotiation between states or sovereign units, especially if negative emotions rule the game, and hatred and traumas from the past bedevil the process. Even if a profit can be made, the parties will renounce it because the gambit is emotionally unacceptable, especially to the people in the streets. Culture and character can both limit and remove obstacles in bargaining.

There is also, then, the impact of the gap between the needs, and the question of how to bridge it in such a way that closure is possible. A wide gap will obviously be a barrier to win–win bargaining, whereas a wide zone of overlap between minimum and maximum positions will ease the negotiation process. Overlaps are sometimes absent, and negotiators have to remove this boundary through trade-offs. A multi-issue process might be needed, and perhaps a multi-party interaction as well. Both complexity and opportunities will be created on purpose, throwing in new obstacles and new solutions. If bargaining is anything, it is a paradox. Solutions create problems and problems open windows for outcomes, depending on the linkages between those problems and the relationships between the parties struggling with their common and opposing interests. In general, longer processes will be needed to overcome complex situations. Interests will have to be reframed, and negotiators' mind-sets will have to be turned over. This takes energy, time, and also resources to deal with the bargaining barriers in an effective way.

Resources: Human, Immaterial and Material

Power and influence, as discussed above, are based on available resources. Power and influence create boundaries for the weak and remove them for the strong. Yet power and influence are not only structural, but also situational. The question is not only what the resources are, where they are and who is controlling them, but also how they are dealt with in the process needed to go from A to B, and how they are influenced by that process.

Humans, then, pose boundaries and create opportunities (Zartman and Berman, 1982). Character, culture, expertise, profession, skill, style and non-verbal leaks all contribute to a positive or negative flow of the process. The question of the ideal effective negotiator is an old problem, but some authors have found some reasonable answers. For example, effective negotiators are those who are tough in defending their interests, while being flexible in the process. They use power without overdoing it, working on the relationship with the other side without coming too close, thus avoiding emotional blackmail. For example, parents have all the material resources that children lack, but the children are often the more successful negotiators, using the emotional means at their disposal. In relationship-dominated bargaining, this will indeed give the emotionally skilled negotiator power. In a business-like, more rationalistic process, the relationship will be of less importance. Rationale and emotions will either create boundaries or remove them, depending on people, the context and their interdependencies.

Immaterial resources were partly dealt with in the paragraph above, but these resources are not always tied to individuals. They can also be an integral part of history or culture, such as moral obligations, past suffering, or cultures of blaming and shaming. These all bring emotional boundaries into play. If the Germans had not accepted their wrongdoings in the Second World War, the European Union could not have been so

successful. In other words, boundaries to the convergence of material resources could only be removed by conceding on the emotional dimension. Without the expression of guilt, no business can be done. We see this problem in cases like the Rape of Nanking in 1937, which has become a tool in the hands of the government of the People's Republic of China (PRC) against Japan, whenever the political situation demands pushing Japan into a corner in order to strengthen China's bargaining position. This event from the past has become a boundary to effective negotiation behaviour for Japan and an opportunity for the PRC. The same is true for the atrocities committed against the Armenians by the Ottoman Empire in 1915. Non-acceptance of responsibility will be a barrier to Turkey's EU accession and can be used to keep the Turks out of the EU without naming other – more painful and important – obstacles.

Material resources will, in general, be a more decisive boundary for the less-powerful than immaterial resources. Again, however, the question is to what extent the relationship between the bargainers might reverse the power balance between them. We also need to answer the question: what are the boundaries to employing structural resources on unsuitable terrain? By winning the conventional war in Iraq, for example, the Americans changed the situation in favour of those who can swim as a fish in the water of guerrilla warfare. So-called 'salami tactics' will slice down the potential of the other side. Entrapment will undo the effectiveness of many of the structural material resources available. This step-by-step process can, according to prospect theory, only be undone by a government that does not carry responsibility. Thus French President Charles de Gaulle, not being responsible for the French entrapment in Algeria, could start the bargaining process to solve the problem. Likewise, US Republicans in the early 1970s could remove the barriers against withdrawal from the swamps of Vietnam in which US Democrats had landed the United States; just as in the new millennium the Democrats took the United States out of their entrapment in Iraq.

A special kind of material resources are natural resources like gas, oil, iron, gold, and to a certain extent food and wood. Their ever-growing scarcity will give rise to a multitude of bilateral and multilateral negotiation processes of a predominantly distributive nature. As availability of these commodities diminishes, the bargaining processes will multiply and polarize (Voorhoeve, 2011). The nature of these processes will not be limited to international bargaining, but will be characterized as much by trade-offs and compromises between regions within countries. This in turn can set internal strife into motion, enhancing the two-level dimension of bargaining across borders, and adding to its complexity. This will place serious strain on regional and global negotiation systems, to the extent that new, innovative forms of bargaining will have to be developed.

Regulators: Law, Procedures, and Diplomatic Norms and Values

Rules and regulations can also be both obstacles and facilitators of effective bargaining. The dictum of the *Mare Liberum* (Freedom of the Sea) by Grotius in 1609 is not by accident a Dutch 'invention', for the Republic of the Seven United Netherlands needed unrestricted usage of the seas in order to dominate them, thereby making as much money – through trade and piracy – as possible. Those who are weak need protection through international law, while to the strong, the law might be an obstacle. It is interesting to see the

changes in the United States' policy towards the multilateral systems. During the Cold War, multilateralism helped the United States to keep the former USSR at bay. After the dissolution of the Soviet Union, however, the multilateral fabric created a constraint to the optimal employment of US force against opponents. Therefore an anti-multilateralist attitude prevailed during the administration of George Bush Junior (2001–2009), providing new opportunities in the short run and creating serious long-term problems. Not being able to control the international disasters of the new millennium, while confronted by the rise of China as an upcoming superpower – usurping the vacant place of the former Soviet Union – President Obama has to steer the United States back into the multilateral system in order to restore some kind of balance in world politics, particularly because regional powers like Brazil, India and South Africa are now counter-balancing the traditional US allies of the European Union and Japan (Layne, 1993 and 2009; Kupchan, 1994 and 2002; Nye, 2002; and Walt, 2005).

Procedures are important boundaries in inter-state bargaining, regulating the behaviour of the parties in such a way that the processes might be successful. In that sense, procedures are boundaries creating channels for effective processes, although they will also hamper those parties who want to exceed these delimitations for situational purposes. It is very much up to chairpersons, secretariats, facilitators, mediators and negotiators to deal with procedures in such a way that they will not be a negative bureaucratic obstacle, but can be manipulated in favour of a successful outcome. Stop-the-clock tactics used by negotiators in the framework of the Conference on Security and Cooperation in Europe (CSCE) – renamed the Organization for Security and Cooperation in Europe (OSCE) in 1994 – are an example of mollifying the procedures in order to temper the negative effects of their inflexibility. While the CSCE had to finish work on the Helsinki Final Act on 1 August 1975, the clock was stopped in order to allow for extra hours of negotiation. Another example, as already mentioned in the first chapter, is the incorrect translation of certain wording on the Human Dimension of the Helsinki Final Act in order to produce an outcome acceptable for all parties. While the English text allowed for criticizing the Soviet Union for human rights violations, the Russian text facilitated a defence against such criticism (van der Velden *et al.,* 1976). It allowed the Soviets to proclaim that such critique was interference in their domestic affairs.

Diplomatic norms and values regulate negotiation behaviour in order to overcome cultural and other differences and to create opportunities for effective flow. Yet outsiders might see them as barriers to effective participation in the process, as not being acquainted with these prerequisites, they could feel excluded and discriminated against. Those who master the diplomatic formula will be more successful than those who do not, with French diplomat Talleyrand as a shining and, at the same time, monstrous example (as Talleyrand's name is now also synonymous with diplomatic betrayal). Etiquette made diplomatic bargaining fit for those who knew how to observe it and use it – that is, for the nobility and the elite of the state (Wicquefort, 1997). It gave the nobility a monopoly on negotiation, also because of the money available to them at a time when the function of Ambassador Extraordinary and Plenipotentiary did not generate any salary.

The Time Factor

Time in a macro sense has already been touched upon because of the impact that past events have on present and prospective bargaining processes. History mirrors itself in the future, and the future will reflect on, and reflect back to, the present. For a member state of the European Union, upcoming negotiations will throw positive or negative shadows over negotiations today. On a positive note, time and the expectations of harmonious processes in the future – where counter-concessions are to be expected in order to compensate for our gambits of the day – will help negotiators to be more flexible in give-and-take. Negative expectations, however, perhaps fed by bad experiences in the past, will leave negotiators less open to a fruitful bargaining process. A future threat might force us to cooperate, while short-term losses might create unwillingness to do so. As said earlier, an interesting example over time is the success story of the *Confederatio Helvetica*. Switzerland at first glance hardly appears to be a viable country with its costly agriculture and infrastructure, difficult terrain and autarkic people, no abundance of natural resources and the absence of seaports, two major religions and four different indigenous languages. Such a country, however, can exist because of the time factor: the prospect of poverty and loss of autonomy if cooperation is successful. The elite understand that continued fighting between elite factions supported by different segments of the population will weaken both the country and the grip of the ruling elite on state and society. Therefore cooperation should be give priority over competition. We see the same phenomenon, though underscored by different structures, in the Netherlands (Lijphart, 1968: 205–219).

In a micro sense, too, time is an important boundary to bargaining. It can have a positive and a negative impact on the success of the negotiation process (Haass, 1991). A shortage of time will limit the opportunities for finding integrative solutions, and there is always a restraint as far as time is concerned. Countries will create time pressure in order to reach conclusions; deadlines are needed as the process will otherwise continue endlessly. States will wait with major concessions until time is nearly up, thus creating a crisis atmosphere. If timing is important, when is the moment ripe for closure? Not too early, and not too late, but how can a negotiator be effective in this? We need time for pre-negotiation and for post-agreement bargaining. Some negotiators will buy time as they need the situation to change before they can bargain a profitable outcome; others are in a hurry. Upcoming elections might be a boundary to negotiating outcomes now, or they may force opponents to concede hastily, as a new government might not be willing to conclude a treaty with them. Negotiators in some cultures feel the absolute need to hurry up anyway, while in others, for example, their time horizon is so wide that they can wait another 50 years for Taiwan to fall into the cradle of mainland China. Action now might diminish the chances for an advantageous outcome later. Some bargainers can still follow a negotiation process while seven of them are talking at the same time (poly-chronic); others have a need for bargaining on a one-dimensional time level (mono-chronic). These different approaches also create opportunities as well as obstacles (Cohen, 1997).

ORDER THROUGH ORGANIZATION

The building of international regimes and organizations may be seen as an attempt to overcome several boundaries, as discussed above. How can one ensure multilateral order in a world where big states dominate medium and small powers, a world where the state itself is prone to erosion, where relations between states are shifting, where extreme non-state forces are putting enormous pressure on the web of states and the multilateral system, and where international law is losing its significance? In other words, how can we deal with conflicts resulting from this and how can we navigate within inter-state relations? The answer is as old as human history: *give and take*. Negotiations – *nec otium*, or not to be idle in Latin (Constantinou, 2006) – are a creative act, or action producing value, an activity by those who are free to choose their ways, in contrast to those who are forced to repeat the same act all the time in order to create quantities instead of qualities: 'work' instead of 'labour' (Arendt, 1958).

As noted in the previous chapter, negotiations have been used since time immemorial as an instrument to reach goals in situations in which parties strive towards a common goal, when at the same time their interests are not exactly running parallel. If these interests are strongly opposed, one speaks of a distributive negotiation situation (Saner, 2005: 41–63). What one wins, the other loses; parties opt for maximum gain and negotiate – if necessary – a compromise. Integrative negotiating is possible, however, in a situation where both parties gain more from the negotiations than they lose in what was invested, because parties are looking for an optimal outcome (Saner, 2005: 81–104). In general, the interests of the parties involved will more or less overlap with each other, which determines whether they will give and take in a cooperative or competitive manner. In some circumstances there is no question of a direct overlap, but by combining issues a common interest can be created. Parties compensate each other's losses with package deals and side-payments, thus 'log-rolling' as the process proceeds.

Where negotiating can be defined as 'to give something, in order to get something', inter-state negotiations add to the sovereignty factor. The consequence of the state dimension in negotiation processes is a certain loss of control over the process. Whereas an agreement can be enforced by a 'third party' in negotiations on a national level, for instance through the EU's Council of Ministers, the problem arises that external pressure is not always successful.

Regimes

Robert Keohane denotes regimes simply as 'devices to make agreements possible' (Keohane, 1989: 111). In his view, they meet the demand for institutionalized multilateral consultations as a derivative of international agreements and institutionalism, and are created because of the lack of an international framework with enforcement capability

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This section on 'Order through Organization' is based on Meerts (2006a), with the support of Theo Postma.

(Keohane, 1983). Another reason for their existence is the high transaction costs for successive multilateral agreements. It is cheaper for states to have consultations on a permanent basis than constantly have to organize separate conferences. In this perspective, governmental and non-governmental organizations act as 'brokers' on the 'market' for international agreements and promote a certain measure of order in international relations. Supporters of the regime theory are taking it one step further in stating that these types of permanent, multilateral consultation structures (regimes) are not only useful, bearing in mind international agreements, but that they also focus on implicit or explicit principles, values and codes of conduct. Krasner thus defines regimes as 'a set of implicit or explicit principles, norms, rules and decision-making procedures around which expectations converge' (Krasner, 1983: 1). This would boil down to nothing other than a socialization process of sovereign states, which would comprise a sustainable added order of international relations.

Some see the development of regimes as a natural evolution of groups of countries trying to deal with their differences in a peaceful way. Morgenthau notes: 'Each of the three world wars of the last century and a half was followed by an attempt to establish an international Government. The Holy Alliance followed the Napoleonic Wars; the League of Nations, the First World War; the United Nations, the Second World War' (Morgenthau, 1967: 438). Groom adds '[I]t was not until [...] Vienna in 1815 that institutions of the modern type emerged. The main political system was the Congress and, later, the Concert System, as subsequently modified by the Hague Conferences. At the same time a network of functional institutions began to spread' (Groom, 1988: 11). Another author, Inis Claude, also sees the Hague Conferences as a turning point between negotiations where major powers are the decisive entities, but where also small powers are an integral part of the final decision-making: 'In contrast to the Congress system, the Hague Conferences included the small powers not only of Europe, but also of Latin America as a matter of right' (Claude, 1964: 25). This does not mean, however, that all states have equal chances in influencing the final agreement. 'Historical accounts suggest that powerful member states determine the policies of international organizations and induce the cooperation of weaker members with side-payments' (Schneider, 2011: 331; Moravcsik, 1991 and 1998).

International organizations may be taken as formally structured international regimes that are recognizable as physical entities with head offices, staff and letterheads. International regimes like the Ottawa Convention banning landmines may exist without any organizational structure. Some authors postulate that international organizations come into being through the intervention of a supreme power and are not more than the institutionalization of existing power structures. As long as the international organization serves the interests of a supreme power, it continues to exist; when this is no longer the case, international organizations will disappear (Mearsheimer, 2001). Furthermore, the international organization will change or even disappear when the underlying power structure changes considerably (Strange, 1983). According to this view, the orderly effect of international organizations is therefore restricted and only as lasting as the international power structures themselves.

It is interesting to consider this controversy in the context of time. For example, at the beginning of the 1980s, the United States was considered a supreme power past its prime, which after the Second World War had created a great number of international

organizations in order to guarantee its position of power and to ensure maximum control over prospective inter-state negotiations. The field of security, for instance, had the North Atlantic Treaty Organization (NATO), which would act as a guarantor for European security and US supremacy in Western Europe; and at an economic level there were the Bretton Woods institutions, which created the preconditions for the United States effectively exerting its economic power: free trade; exchange-rate stability; and free access to raw materials.

Some saw in these developments proof that the post-war Western negotiation regimes were indeed the resultant as well as an instrument for US supremacy to exert its power. A changed, more multi-polar power configuration would force regimes into fundamental adaptations or even make them disappear. Others stated that the *own dynamics* of negotiation regimes were probably strong enough to survive the shift in the underlying power relations, and that years of mutual cooperation between member states should have led to converging principles, values and codes of conduct.

Dramatic changes took place, however, in global power structures. The velvet revolutions of 1989 in Central and Eastern Europe, followed by the collapse of the Soviet Union in 1991, created a new world system in which the United States played an absolutely dominant role in terms of political, economic and military power. The effects of this on international regimes and the channelled flow of negotiations were clearly visible. The international trade regime was enforced by moulding the General Agreement on Tariffs and Trade (GATT) into the World Trade Organization (WTO) in 1995, in order to provide it with a mechanism for settling trade disputes. The International Monetary Fund (IMF) and the World Bank threw themselves into liberalizing the planned economies of the former Eastern Bloc countries and raised the Western views on democracy and the economy as absolute norms. NATO rapidly recovered from the shock of a disintegrated Warsaw Pact and started its new lease of life as a transatlantic organization for collective defence, expanding towards the East and throwing itself into out-of-area operations like in Kosovo and Afghanistan. There was hope that the United Nations, which had been greatly paralyzed during the Cold War by the superpowers' rivalry, could finally commit itself to executing its essential mission: keeping the peace by international cooperation and collective security (Langhorne, 1998: 5).

Regimes and Negotiations

Depledge observes that '[g]lobal negotiations are often closely associated with the formation and development of regimes, defined as sets of both formal and informal rules, institutions and procedures aimed at governing action in a particular issue area, usually based on a founding treaty', while 'an important function performed by regimes is precisely to provide an efficient framework for negotiations' (Depledge, 2005: 13). On the nature of negotiations within regimes, he notes that they:

> […] have a special character. Like all intergovernmental negotiations, they are repetitive, but more intensively so, often involving not only the same governments, but also the same individuals. [...] The negotiation process within the regime typically gives rise to its own set of informal practices and procedures, even

> its own culture. While such intensively repeated games can provide important opportunities for learning and therefore improving ways of negotiating, the flipside is the danger of ossification: the negotiation process gets stuck in old ways of thinking and doing that drag down substantive progress (Depledge, 2005: 13–14).

Similarly, William Zartman points to the connectedness between negotiation processes and international regimes by arguing that 'international regimes are continuous two-dimensional negotiations among sovereign states for the purpose of resolving a problem of coordination under conditions of uncertainty' (Zartman, 2003: 14). Zartman sees regime-building as an ongoing negotiation.

Like Depledge and Keohane, Zartman believes that 'the concept of "regime" was devised to meet the need for something looser and less rigid than "international law" or "international organization"' (Zartman, 2003: 17), although nowadays an international organization is regarded as a highly structured regime mode. Spector and Zartman point out that regime building is a painful negotiation process: 'Fear of relinquishing sovereign legal authority is obviously a very serious issue that contrains the evolution of any regime. International regimes constitute governing in the absence of government through the processes of negotiation' (Spector and Zartman, 2003: 282).

There is a rich variety of regimes. Spector distinguishes three kinds of national, and three kinds of international regime negotiations. On the national level, he identifies: (1) acceptance/ratification negotiations; (2) rule-making negotiations and enforcement; and (3) monitoring and reporting negotiations. As for international regime negotiations, he classifies: (1) regime formation negotiations; (2) regime governance negotiations; and (3) regime adjustment negotiations (Spector, 2003: 65–66). Together with Zartman, Spector concludes that the following categories of regimes can be observed: those that remain more or less in force as originally negotiated; regimes that grow and evolve; and regimes that follow a jagged course (Spector and Zartman, 2003: 372). The second kind of regime, those that grow and evolve, is seen most frequently in the world.

It is important to recognize that regime and negotiation are symbiotic: while regimes are created through national and international negotiation processes, they then protect these processes and thereby enhance their effectiveness in reaching outcomes. Moreover, *'for the most part, exogenous shocks or crises increase the probability of success in efforts to negotiate the terms of international regimes*' (Young, 1989: 371). These outcomes 'are not monocausal events, but rather the product of a multitude of strategic, political and [...] psychological factors' (Terris and Tykocinski, 2014: 14). 'As in any negotiation, personal skills are an important factor in the process, but in the multilateral setting, the context, the jargon and the procedures rule the day' (Perlot, 2014: 27). Nevertheless: '*Institutional bargaining is likely to succeed when effective leadership emerges; it will fail in the absence of such leadership'* (Young, 1989: 373).

How structured or how fluid are regimes nowadays? According to Spector and Zartman, regimes tend to be more fluid than before: 'In the early twenty-first century, reality tends to lie on the softer end of the spectrum' (Spector and Zartman, 2003: 292). Taking the number of regimes in the world, this statement is true for sure, especially after the present-day erosion of the multilateral system through unilateral action. Yet if one divides regimes into 'strong' and 'weak', 'important' and 'less important', or looks at

strength and effectiveness, the world might look very different. Regimes with most added value are normally more structured than those of a more fluid nature. In other words, more '*regimist*' regimes seem to be more structured. As they matter more to the international system, one could make the statement that *effective regimes in the twenty-first century tend to lie on the institutional side of the spectrum.*

However, as regimes' effectiveness seems to be dependent on their flexibility, one should add that *effective regimes are highly structured institutions that are managed through fluid processes.* If the processes become less fluid and more bureaucratic, as tends to be the case with successful regimes (which therefore have a long life-span in general), '*regimist*' regimes might hamper their own success in the long run, just as diseases tend to affect a body more as it grows older and older. The fluidity of the process is even more important if one looks at the political dimensions of the regime. According to high-ranking German diplomat Michael Schäfer:

> Negotiations are the art of consensus-building, and the more political the subject matter is, the less formal the formats of the negotiation process will be to prepare for the best possible outcome. Why? Because of the heterogeneity of the various interests involved in that process (Hanschel, 2005).

Shifts in Multilateralism

In less than twenty years, the United States' position on the world stage changed from a superpower past its prime in the Western world to the sole global superpower, although this monopolarity is already eroding into multipolarity in the second decade of the twenty-first century. In a slightly different form, the issue of being able to bring order in international negotiation regimes is more than ever of current interest (Van Staden, 2005). The problem has become the incomparably large dominance of the United States in international relations. Has the United States become too big for its self-selected existing order of multilateral negotiation regimes? The foreign policy pursued by the George W. Bush administration points very strongly in that direction. The Bush administration's willingness for military intervention when US national security was supposed to be at stake, without even a mandate from the UN Security Council, the sudden withdrawal of all support for the implementation of the Anti-Ballistic Missile (ABM) Treaty, the US Senate's refusal to ratify the Comprehensive Nuclear Test-Ban Treaty (CTBT), the US refusal to accede to the Statute of Rome on the creation of the International Criminal Court, and the neutralization – for example through the North American Free-Trade Association (NAFTA) – of multilateral WTO agreements by 'voluntary' bilateral covenants with trading partners, all of these attitudes indicate that the way in which the United States lets unilateral action prevail over multilateral solutions was on the increase. In other words, in the first decade of the new millennium, the multilateral order became more of an obstacle than a transmission channel for pursuing US national interests, or, as Peter van Ham comments, 'all in all the United States seem to have come to the conclusion that they no longer can afford the luxury of unadulterated multilateralism. […] The existing international order was established to *manage* the Cold War, not to take al-Qaida for a ride' (Van Ham, 2004).

After the Bush administrations' interventions in Afghanistan and Iraq, President Obama changed the United States' course, as he saw that the dismantlement of the current multilateral order is not in the ultimate interest of the United States. Washington is aware that the *collateral damage* of a one-sided action can take a turn for the worst regarding national interests in the long run. Multilateral approval and support for US actions therefore remains advisable, if only for pragmatic reasons. Even if the United States puts aside the question of legality, the question of legitimacy remains an important consideration. The (neo-)realists' point of view subsequently dictates that, for this reason only, it is not in US interests to blow up the multilateral order.

It therefore seems that the multilateral order has its own dynamics at its disposal and that it plays an enduring role in regulating present international negotiation processes. Unfortunately for the US regime's thinkers, these dynamics do not emanate from converging implicit or explicit values, principles and codes of conduct, but from a (neo)-realistic strategic perception of the national interests of the United States.

The United States' position of power is in itself neither a positive nor a negative factor for the institutions that form the international processes of negotiation. The question is much more about whether these institutions include or exclude the supreme power (Meerts, 2004). To speak in terms of negotiating, are the institutions being integrative or distributive? The so-called BRICS are on the rise (Brazil, Russia, India, China and, to some extent, South Africa). They demand power-sharing with the United States and Europe, both inside and outside the United Nations Security Council.

But apart from a potential multi-polar supremacy of six countries plus the European Union – with Germany, France and the United Kingdom as the EU's main powers – we live in a world of increasing mutual dependency, with a natural tendency in the direction of regime-building in order to reach more predictable negotiation results. The more that negotiation processes are embedded in strong international structures, the more stable they will be and the greater the chance of *assured outcomes*, guaranteed outcomes. With regard to the evolution of negotiation processes, it is clear that the disruption of the international order will erode the effectiveness of negotiating as a means of settling conflicts. The processes will increasingly lead to successful results in fewer cases, but the negotiation process as such is certainly here to stay.

Indeed, the more fragmented the international system, the stronger the need for negotiating as a bridging mechanism. Negotiating processes will have to compensate for the weakness of the structure. This is not ideal, because negotiations are more fragile as an instrument if they lack being embedded institutionally.

Coping with Challenges

New international orders often come into being after man-made disasters. The world apparently needed a first and a second world war in order to finally create global political organizations: the League of Nations and the United Nations, respectively. The Cold War gave rise to NATO and Warsaw Pact. Meanwhile, German–French animosity needed three wars before it was understood that a problem cannot be solved on the level that it arises, so the European Union was created.

As soon as a major threat arises, regimes are put in place. The more serious the challenge, the more willingness there is to invest in dealing with it, but if and only if the threatened party cannot deal with it on its own and needs allies, and moreover if an ad-hoc alliance cannot be the answer and an institutionalized structure is needed. If the party under threat is strong enough to deal with the issue, regime formation is not needed and will actually hamper the room for manoeuvre of the state involved so that an effective negotiation process cannot be expected to take place (Zartman and Rubin, 2000a).

New challenges might put life into existing organizations that never really got off the ground or that lost their significance. The need for peacekeeping operations led by countries in the region itself thus vitalized the Organization of African Unity, now the African Union (AU). The need for security, stability, protection of human rights and the emergence of new democratic systems gave new meaning to the earlier-mentioned CSCE, now the OSCE. But how effective are these regimes in comparison to the needs of the international community? How effective are new institutions such as the Yugoslav Tribunal and the International Criminal Court? They want to move from peace to justice, but peace versus justice is often the problem (Zartman and Kremenyuk, 2005) and there is not enough external and/or internal pressure to start a 'common project', to establish a regime that is strong enough to cope with the challenge.

Although many techniques have been developed in order to get regimes to deal with problems effectively, for example in the European Union (Meerts, 2004), they can hardly be successful if the major powers within and outside the regime want to handle regime change unilaterally, bilaterally, or trilaterally, or indeed outside the existing regime(s), as the restraints of the regime might block an effective '*Alleingang*' (going it alone). Here we have the paradox that rules and regulations, and institutions and vested interests, strengthen the capability of a regime to cope with problems. This creates a bargaining platform, but at the same time it restricts the bargaining range and freedom of the more powerful states. They will therefore work in the spirit of negotiation, being a context-dependent process, by acting in a situational way. This might then be favourable for some parties involved, but it can be disastrous for the common good. In the European Union, this is the classical dilemma of full or partial integration of new member states; in the United Nations Framework Treaty on Climate Change and the World Trade Organization, it is about short-term over long-term interests.

In other words, the constraints to having adaptable and effective regimes are of both an internal and an external nature. Internal delimitations are often difficult to handle if outside pressure is lacking. This is not so much an issue of a 'mutual hurting stalemate', but of lack of 'painful pressure from outside' (PPO). Perhaps this was comfortable hurting pressure from outside, which is what kept the Socialist Federal Republic of Yugoslavia together. When the Cold War was over, this pressure fell and so did Yugoslavia. PPO can, of course, be created by the regime itself, as with Indonesia's regime, which sought to strengthen its internal position by seeking the '*konfrontasi*' (confrontation) with Malaysia from 1963–1966, and like the Soviet Union and United States, which gained more control over their allies in the Warsaw Pact and NATO, respectively, by overplaying the external threat. Both regimes flourished in this way, as a regime at least, but somebody of course had to pay for this – the civilians of the particular regime's member states. NATO hardly survived the end of the East–West confrontation and the Warsaw Pact died on the spot,

yet with the regimes gone or destroyed, instability entered the European theatre (Davies, 1996).

Negotiation processes within the regimes – a regime's lifeblood, it has been said – are quite defenceless without their cover. Like a turtle, the process of international negotiation is a peaceful, but slow animal. It needs the shell of the regime to survive, or at least to be effective and sustainable. At the same time, the shell is a heavy burden that slows down the turtle even further, with the turtle thereby losing its relevance and perhaps being trod upon. If the shell is hard enough, however, the animal will survive and can wait for a better future.

Possible Future Developments

So what about that future, let us say the first half of the twenty-first century? From a political point of view, it will be impossible to calculate the evolution of international regimes as international organizations if national regimes in the form of the sovereign states are overlooked. The central question seems to revolve around the extent to which (member) states need each other in order to expect further regime growth.

As centuries pass by and violence becomes a more costly affair, one can observe an evolution in regimes in the sense of their international organization and cooperation. In general, regimes become more complex and more effective, although the one does not always favour the other. Interdependency fosters regime-building, but because it removes stimuli (threats), it also puts the brakes on.

At the beginning of the twenty-first century, there does not seem to be much room for optimism as far as the further growth of international regimes is concerned. The present distribution of power among states, which still continue to prioritize sovereignty over international cooperation and international organization, works against further regime-building. Some kind of equilibrium – whether mutual assured destruction or risk management, a Concert of Europe approach or a well-understood balance of interests (Dupont, 2003) – seems to be needed to create the cradle in which the international regime can grow old and flourish. So we cannot expect too much from regimes as long as a new balance between major regimes has not been established, and this might take the whole first half of the twenty-first century.

Strengthening regimes in the coming 50 years will only be possible if states not only focus on structured international cooperation and multilateral bargaining, but also prioritize ad-hoc negotiation processes and bilateral bargaining. Multilateralism does not work without bilateralism. As negotiations are the life-blood of regimes, so bilateral negotiation is the gist and juice in creating a new balance of power among the major regimes, whether they are states or international organizations. In other words, we have to look at both structured and less-structured modes of cooperation. Negotiation processes are fit for both.

Another important point is the level of negotiation. National problems will have to be negotiated at the national level. This seems self-evident, but in the European Union in particular, problems are shifted to inappropriate levels. Governments tend to get rid of difficult issues by pushing them to higher levels, then blaming 'Brussels' for not being effective (see chapter XI).

Inclusiveness is also important. The OSCE is a good example of regional inclusiveness, both for issues and for countries. Again, inclusiveness might give rise to opportunities (such as trade-offs and multiple outcomes) and to problems (such as complexity). William Bottom gives an example of the disastrous consequences of exclusion at Versailles (Bottom, 2003), while Dupont shows both the importance of including the major players and excluding the minor ones in Vienna in 1814–1815 (Dupont, 2003).

We should keep in mind, however, that:

> Regimes may assume a life of their own, a life independent of the basic causal factors that led to their creation in the first place. There is not always congruity between underlying power capabilities, regimes, and related behaviour and outcomes. Principles, norms, and procedures may not conform with the preferences of the most powerful states. Ultimate state power and interests condition both regime structures and related behaviour, but there may be a wide area of leeway (Krasner, 1983: 357).

In Conclusion

Some positive and negative effects of boundaries and beyond have been dealt with in this chapter. The first part identified some aspects of process and context connectedness, concluding that bargaining is a viable alternative to warfare and other tools of conflict management, but that it can only be effective if it is set within certain limits. Without boundaries, there can be no effective bargaining. These processes can flourish in a world of carved-up states, structured by systems, squeezed between common and opposing interests, on the basis of human and other resources, regulated by law and mores, and operating under variable time constraints. This is the positive side of the coin – without this, the process will not work.

However, boundaries also pose problems. Geographic limits can be an obstacle to effective cooperation, which is why we try to let geographic and other boundaries evaporate in the European Union. Systems might exclude potential partners, and radically opposing interests create intractability. Governments and their representatives are often unwilling to negotiate because of the past, present and their vision of the future. Regulations can strangle creativity. Bargaining takes time; if not enough time is allowed for the process, it will falter or at least give sub-optimal outcomes. Yet these are the negative situational effects of a structural ingredient that we defined as a prerequisite for bargaining processes: boundaries. In other words, without limitations we cannot have negotiations, but we have to undo the negative aspects of them. Without nerves there is no happiness in life, but these same nerves can unleash pain that we would prefer to avoid as much as possible.

In order to balance the negative aspects of boundaries, regimes built networks in order to cut across the frontiers between them:

> Government networks promote convergence of national law, regulations, and institutions in ways that facilitate the movement of people, goods, and money across borders; that assure a high and increasingly uniform level of protection and legal rights; and that guarantee the cross-fertilization of ideas and approaches to common governance problems. That cross-fertilization, in turn, may in some cases produce competition among competing standards. It also makes possible informed divergence, where national regulators, legislators, or judges deliberately proclaim and preserve national law, rule, principle, or tradition in the face of countervailing global trends (Slaughter, 2004: 213).

As bargaining is an evolutionary process, boundaries will change with it. Context has a huge impact on the processes within its domain, but the processes will influence its environment as well. Just as the river erodes the mountain slopes, the process will change its context. In the short run, context seems to be the dominant feature, but in the long run the process will modify its own context. It is, in other words, a question of give-and-take between process and context.

Bargaining is another dimension, like negotiating a difficult road. Understanding this two-fold process of evolution is the real challenge. How did political processes create the state structures in which we are living, and to what extent do states and international organizations shape the processes that will have to take us from A to B? Clearly, this goes beyond the boundaries of bargaining, but it is important to state that process and context deserve equal attention because of the way they are intertwined. Only by studying them in connection with each other might we gain some insight into the role of bargaining and boundaries in the coming decades.

CHAPTER IV

Entrapment in Negotiation

This chapter is based on Meerts (2005c).

CHAPTER IV: ENTRAPMENT IN NEGOTIATION

Entrapment in international negotiations is a form of escalation (Faure, 2003: 190) whereby parties involved in an interactive, non-violent decision-making process with others with whom they have both common and conflicting interests find themselves unable to escape from the costs and investments that they have already made. Brockner and Rubin define entrapment as a decision-making process in which individuals strengthen their commitment to a previously chosen, although failing, course of action to justify or recover their prior investments (Brockner and Rubin, 1985: 5). This chapter addresses entrapment in international negotiations, and focuses on the behaviour of states when they attempt to reconcile divergent interests in situations in which common ground is scarce and control is difficult. As a form of escalation, entrapment can be a transitive (that is, initiated) or intransitive (that is, phenomenal) process, although these two types are dealt with together as they are not always easy to keep apart in practice, and they share similar characteristics.

Entrapment in the context of international negotiations is one of the most fascinating and destructive of negotiation processes. A party that is entrapped (or that entraps itself) is in an unenviable position. For individuals who find themselves entrapped, the consequences can be serious in the sense that they lose out on a deal that they had hoped to achieve. For organizations or countries, the effects can be disastrous. Whole international systems can become entrapped, and the consequences of such a situation often run out of control. An example of this is the global situation during the period of US–Soviet confrontation from 1950 to 1990. The 'Cold War' is simply a short-hand way of describing the entrapment of the two superpowers at the time, which were caught in a 'Balance of Terror' (Schelling, 1963: 239). Nuclear power led the protagonists into the trap, and because of the global nature of the force involved, the whole world was caught in that trap. Albeit on a regional rather than a global scale, the same kinds of mechanism can be seen in the nuclear and conventional arms races between countries such as India and Pakistan.

Entrapment does not only occur in polarized situations. It happens in the European Union as well: 'once Member States have committed themselves to a particular set of norms and/or policy course, they are likely to find themselves entrapped, constrained to take further actions that do not reflect their original intentions and/or current preferences' (Frank Schimmelfennig, as cited in Thomas, 2009: 343–344). Daniel Thomas adds to this that 'entrapment is most likely to occur when several conditions are met', namely when actors are determined about the course to follow, if policy commitments have already been made, if external conditions are in line with those policy commitments, and where there is strong pressure to comply and public attention is significant (Thomas, 2009: 344–245). In other words, entrapment is a process that limits the freedom to act. It can occur

in any negotiation process, although – as will be seen hereafter – more conditions than those mentioned here will enhance the risk of being entrapped.

The essence of entrapment is that even though one or more of the parties may not like the agreement towards which they seem to be moving, they find it extremely difficult to extricate themselves from the process. Entrapment occurs when the shape of the negotiation process is like a gorge that has a wide entrance, but that slowly but surely becomes narrower and narrower. One or more of the parties are left with increasingly less room for manoeuvre, so that at a certain point they can no longer turn back and are forced to work towards an agreement that they are finding less and less attractive. Even when they can still turn back, entrapped parties are often compelled to continue, just like gamblers who are very much aware that they are losing but want to recover some of the losses that they have already suffered. When individuals or groups find themselves in this situation, an appropriate response is pity. However, when it happens to countries or the international system itself, alarm bells should really start to ring. Leaders can guide a nation into entrapment situations without citizens being aware of it: 'The apathy of the masses and their need for guidance has its counterpart in the leaders' natural greed for power' (Michels, 1966: 205).

Entrapment is thus a special form of escalation, in which the process itself has an enormous impact on the party's perception of the 'best alternative to a negotiated agreement' (BATNA) (Fisher, Ury and Patton, 1991). The alternatives are at the same time increasingly better and increasingly worse. This chapter first offers an analysis of the characteristics of entrapment (choice, uncertainty, investment and repetition), and then considers the various levels at which it occurs (personal, interpersonal, national and international). It then turns to examining the major factors involved (planning, information, communication and control), and to presenting and analyzing a case study that is suitable for teaching negotiators about entrapment, and will draw appropriate lessons from it. A final section summarizes the main findings and briefly discusses entrapment as a strategic mode.

Characteristics

Choice

Entrapment is the result of choices made: not just one or two, but many of them; small, step-by-step decisions that result in a step-by-step loss of room for manoeuvre. In principle, a party that enters negotiations has complete freedom of choice. (In practice, however, this is not always true, and in any event, complete freedom of choice is probably an illusion.) Although there may be different degrees of freedom of choice at the start of the entrapment processes, some freedom – or at least the *perception* of a certain degree of freedom – is a prerequisite for any negotiations. Brute force cannot be regarded as a type of international negotiation; rather, it should be seen as an alternative to negotiation. In negotiations, the parties decide on matters jointly, although power is rarely evenly balanced.

A dreadful example of entrapment was the treatment of the Jews by the Nazis during the holocaust. The Nazis often tried to make Jews responsible for the deportation of other Jews. To persuade them to cooperate, the Nazis tried to hide their true intentions until the

Jews had been entrapped sufficiently that they could no longer escape from the process. The Nazis divided Jewish communities into several groups to whom they gave different guarantees of protection. Many of those with the highest degree of protection were willing to cooperate in the selection and transportation of their fellow Jews in order to save the other echelons. At the same time, these collaborators, who were often well intentioned, found themselves in an increasingly difficult position as a result of their collaboration. The deeper they became involved in the process, the more difficult it became for them to extricate themselves. They believed that negotiation with the Nazis over the fate of some of their kinsmen would save the lives of many others by buying time. However, to paraphrase the German clergyman Martin Niemöller, first they came and took the communists, but I didn't protest because I wasn't a communist. Then they came and took the trade unionists, but I didn't protest because I wasn't a trade unionist. Then they came and took the Jews, but I didn't protest because I wasn't a Jew. Then they came and they took me ... and there was nobody left to protest against that.

The behaviour of these collaborators ensured that the process of the Holocaust could proceed smoothly, with minimum effort on the part of the Nazis and with minimum loss of time. This meant that the Nazis did not need to use too many resources. Although they probably would have been able to force the Jews into the death camps without using entrapment techniques, such a move would have reduced their capacity to wage war on their military enemies. The Jews – and prisoners of war – were also forced to work for the Germans and thus support their captors against their potential protectors, the Allies. The Germans tended to use these tactics more in Western Europe (where the situation was more transparent and the population less anti-Jewish) than in Central and Eastern Europe, where mass killings were often committed. However, as we shall see, entrapment tactics were used even in Central and Eastern Europe, as in the city of Vilnius, for example (Szur, 1997).

Choosing to embark on a process weakens one's ability to exit that process. However, this particular loss of control may be more than compensated for because participation in the process could give you greater control over some matters within the process that would otherwise have been beyond your reach. This means that there are two kinds of choice: namely, those related to the process; and those related to the situation. To enter into an alliance with others entails sharing control over the process and the structures that direct this process. Creating greater situational control within the main process and within the structures may be a better choice than trying to keep what in theory is absolute control, but may actually turn out to be control over nothing. What is decisive is the substance of control: for what purpose does a state desire control and freedom of choice? If the result is reduced control over a more substantial economy, a state may decide to cede absolute control in exchange for less control over a better situation. Leaders can decide to force their people into a situation by destroying their alternatives, and so deliberately limit choice: for example, 'He [the general] puts his troops in a position where they have no choice but to fight and stay alive' (Chung, 1991: 12). However, it is important to consider to what extent this situation is actually an improvement. One cannot be certain that entrapment is not just around the corner, which brings up the question of uncertainty.

Uncertainty

Uncertainty is a hallmark of any negotiation. Negotiators have a natural tendency to keep their hands as free as possible, and thereby to create uncertainty. In the simulation game 'Crisis in Yugoslavia', participants 'tried to prevent attacks by keeping their positions veiled as long as this seemed possible' (Meerts, 1989: 346). Negotiators start off with a lack of knowledge, not only of the other party, but often of their own situation as well. Their instructions are often fuzzy, being the result of a bargaining process within the bureaucracy. Some diplomats are quite outspoken about this. 'I never', wrote Lord Malmesbury, 'received an instruction that was worth reading' (Nicolson, 1998: 81). Negotiators need time before and during the actual negotiations to gather as much information as possible, not only about the subject matter, but also about the negotiators with whom they have to deal: their skills, style, character and culture, as well as the political system and bureaucracy that they represent, and so on. Culture has a decisive effect on the question of exploring for information. In some cultures, people shy away from a lengthy process of ambiguous reconnaissance, and negotiators want to tackle the business 'straightaway'. In other cultures, the exploration phase is considered essential for a proper evaluation of the negotiation situation.

But however much exploration occurs before the process starts, and however much time is spent on exploration before the actual bargaining phase, one will not have all the information needed until the entire negotiation process has occurred. The negotiation process is not a neutral instrument. It has an impact on itself, because complete information can only be obtained in a step-by-step sequence. As information is released in small bits, this influences the direction of the process as a whole. In other words, to obtain all the information required takes time, but time can be dangerous. Time can be manipulated, for example, by setting deadlines and thereby forcing the negotiators into taking decisions. Without deadlines, international negotiations have a tendency to go on forever. This is because certain countries want to make progress on certain problems, but they know that the other states will not accept certain proposals unless several months or years of negotiations have been invested in them, and so they procrastinate. So much progress would not have been made in the European Union, for example, without the deadline of the change of the rotating Presidency every six months. It is, of course, possible to exclude uncertainty about one's intentions, as in the 'chicken game' (Garnett, 1975: 127). However, this might have disastrous consequences.

Conversely, deadlines can be moved or not set. If the situation changes in favour of one of the parties, that party may use time to change the balance of power, in which case time works in their favour. Without having to make any additional demands, one of the parties may manoeuvre itself into a stronger position, and entrap the other side by using time as its weapon. Time, often overlooked by the other party, is one of the most effective tools in an entrapment strategy. It adds to uncertainty, which makes it one of the elements on which negotiators need to focus if they want to avoid (or create) a trap. Negotiators need time to be sure about certain points in the negotiations. However, time may also create uncertainty: the context may change and the direction in which it is changing may be unpredictable.

Uncertainty about the nature of the relationship between the negotiators on the two sides can also be used as a tool in entrapment, because the relationship can be

manipulated. By creating the impression that you and your opponent have an excellent relationship, it is possible to suggest the existence of a degree of trust that is not really there. Trust is therefore an element of uncertainty that should be added to the role of time management. Negotiators need to examine the negotiation situation closely in order to decide whether the other party can be trusted. If one of the parties benefits from breaking the relationship, additional measures need to be taken. A good relationship is no longer enough and guarantees need to be sought. So-called prisoner's dilemma games are an excellent tool for training negotiators to deal with the matter of trust (Siebe, 1991: 181–185; and Hayes, 1991, 365–366).

The more insecure the situation, the more trust is needed and the more difficult it is to build up trust. If emotions enter into the proceedings (and trust is, after all, closely related to emotion), negative influences may be expected. Positive emotions can reduce uncertainty and can therefore lower the chances that a process of entrapment will arise. However, positive emotions can also lead to entrapment. If they are absent (that is, if trust is low and the relationship is not good), negotiators need to take care not to be trapped. They may move slowly and seem indecisive, like Fabius the Procrastinator, who avoided joining battle with Hannibal. However, if positive emotions are present, entrapment may result for two reasons:

- First, because one side may trust the other without there being good reason to do so;
- Second, because if negotiators within the same team like each other, they may not be sufficiently critical of each other's behaviour, which leads to 'group think'.

An example of the second was the entrapment of the Dutch during negotiations in 1991 on the Maastricht Treaty (Blair, 1999). Negotiators within the Dutch Foreign Ministry's team failed to react to negative signals because they were convinced that their own strategy was right and no one within the group dared to criticize the others. Positive emotions may thus be dangerous.

The Roman Senate was not happy with Fabius's procrastination and replaced him with two consuls who stormed forward and were – quite literally – trapped at Cannae. Hannibal did not really do anything. He just started off with a certain formation, and the Romans, through their own push and power, simply entrapped themselves. In this case, it was not so much uncertainty that led to entrapment, but the false sense of security that arose because the Romans underestimated their enemy, or overestimated their own strength. More powerful countries often overestimate themselves, which can lead to their entrapment by the weaker party. Uncertainty may give rise to caution, while certainty may lead to recklessness and to entrapment. Uncertainty can function as a warning signal and is therefore a factor that can help cautious negotiators to avoid entrapment.

Investment

To avoid entrapment, it is therefore important to keep control of the investments. To lose track of these may easily lead to entrapment. A party that is losing control of its investments may try to regain control with new investments that escalate the investment process. If these investments are also lost, entrapment becomes more difficult to avoid. To abandon this situation may mean losing invested concessions, and since such a loss may be unacceptable on the home front, more investments may have to be made to try to

recoup those that have been lost. Huge losses can be sustained during such a process of entrapment, but the gradual nature of the process means the magnitude of such losses may not become apparent until the mid-game phase, by which time too much has been invested to make turning back an option. On the other hand, further investments may lead to even greater losses and further entrapment. In this dilemma, a higher authority needs to step in to take responsibility for cutting losses. In other words, a General de Gaulle-type character is needed to call a halt to the spiral of entrapment, but he or she should be aware not to become part and parcel of the entrapment process. If this happens, the intervention of the *Deus ex machina* – or unexpected intervention of a new event – might create an even more dangerous situation.

Investment in the negotiations may take either material or emotional forms. Negotiators are tied to the success or failure of the negotiations: their position, their status, and their face are involved. Depending on their cultural backgrounds, this investment of the self can be serious to a greater or lesser degree. In many cases, emotional investment is a more serious matter than material investment. This is because material investment can be viewed with a certain distance, a certain objectivity. Losses are never pleasant, but they may be compensated by gains elsewhere. The more senior the officials are, and the greater overview and power they possess, the more likely they are to be in a good position to compensate for the loss of A by the gain B. If B is more important than A, this combination of losses and gains may even be part of a deliberate strategy of gambits. Decisions may be taken on a purely business-like basis, even to the extent of ruthlessly sacrificing negotiations in one sector to give negotiations in another sector a chance of being successful.

However, such a chess game cannot be played easily if emotional investments are at stake. People are not flexible in matters such as face and status. 'People responsible for a losing course of action will invest further than those not responsible for prior losses. [...] People can become so committed to a position that they will pay more for a monetary reward than it is worth' (Staw and Hoang, 1995: 474). It is not easy to 'separate the people from the problem', and it is often not desirable to cut the links between the two (Fisher, Ury and Patton, 1991). Negotiators are human beings, and like most human beings they prefer to win, not lose. This is again very much a cultural matter. To prevent loss of face and faith, negotiators are often inclined to invest at a stage at which investment is no longer wise. This self-propelling nature of the immaterial side of investment may be of greater importance in explaining the dynamics of entrapment processes than the material side. The emotional side of investment is more difficult to handle than the material side. To keep control of the situation, the negotiators themselves need to be brought under control. The way to do this is to send in a person of higher level, if available and willing. High-ranking officials are often unwilling to step into an entrapment situation, as they are blamed if things go wrong. Moreover, the higher they are in the hierarchy, the deeper they fall. High-ranking people are also in a position to shy away from involvement, as they are not easily commanded by others.

Much depends, therefore, on the negotiator's position in the hierarchy of his or her organization. If the negotiator has a very senior – or even the most senior – position, entrapment is an imminent danger. Who is going to turn the minister around? Who dares to contradict the dictator if it means endangering one's life? The higher the rank

of the negotiator directly involved in an entrapped situation, the greater the danger that entrapment will escalate. High-ranking politicians who make mistakes will find it difficult to acknowledge a mistake out of fear of losing face. They might try to justify themselves in order to protect their reputation, which may lead to giving precedence to their personal emotional interest over the interest of their country – the phenomenon of entrapping themselves through 'egotiation', as analyzed in chapter IX. Their advisors and assistants might want to correct their superior, but it is doubtful how he or she will respond, as being corrected by underlings might imply loss of face as well. The politician's staff would thus not always be happy and willing to correct their leader, as this might have a negative impact on their own career. To keep their superior on track is one of their most difficult and thankless tasks. They might decide to allow the self-justification to stand as it is and abstain from correcting their minister. One reason for this self-justification is the tendency to 'associate persistence [...] with strong leadership' (Staw and Ross, 1987: 70):

> [R]egardless of any need to justify, individuals may also learn that consistency in action is a more desirable leadership strategy than experimentation. Such an implicit theory of leadership would mean that many individuals would choose to remain committed to a dubious course of action simply because the opportunity to receive a positive evaluation by others would be greater in the case of consistency than with experimentation (Staw and Ross, 1980: 259).

Repetition

Entrapment is made up of a series of incidents. This makes it relatively invisible, and also relatively stable. One of the parties (or sometimes both) is devoured, little by little. The first move in entrapment is often made by the party that will be trapped, and the entrapment occurs through the assertiveness of that party. This is one of the most interesting and characteristic features of the entrapment processes: victims are often trapped by their own actions. The party that uses the circumstances in which entrapment becomes possible often plays a somewhat passive role – rather like a quicksand or gin trap that is already there. Victims become increasingly ensnared as a result of their own actions and emotions in an intransitive escalation. Each move forward by the victim serves to make the trap more effective. Neither the trap nor the trapper need to do much to add to this.

Entrapment may be seen as an escalator moving downward, not upward. In this sense, entrapment may be seen as the counterpart of escalation. It shares the step-by-step nature of a development in which tension mounts with each successive step up. The crisis steadily evolves until an almost inevitable finale. It is a balanced evolution that leads to revolutionary consequences. The differences between this and escalation are, however, the step-by-step growth of an imbalance in power, and the step-by-step fixation of the situation. Entrapment could be defined as a stable process of escalation in which one (or more) of the parties systematically loses out as a result of their own actions. The growing imbalance of power is channelled into an environment that creates a kind of self-fulfilling prophecy, a kind of predestined situation. As in escalation, exit options begin to disappear, but normally only for one of the two parties; and step-by-step investments are increasingly made, but more by one party than the other. It is possible, however, for both parties to be entrapped, with the same mediation working on each.

A prisoner's dilemma exercise (Meerts 2014, 47-48) has been used to train people to understand entrapment. This has been used extensively to confront players with issues such as trust, insecurity, implementation, win–win, win–lose, and lose–lose situations, and emotional, rational and irrational behaviour. By using real names of countries and realistic situations (such as Iran and Azerbaijan negotiating an oil deal, or Mongolia and China negotiating a cashmere wool deal), cultural elements can be brought into play as well. Depending on how the game develops, it can illustrate either one-sided or mutual entrapment. As trust diminishes and emotions rise, an entrapment context is created, to which one or both negotiation teams may fall victim. They will win much less than they could, and the third party will gain from this lack of cooperation. Again, we see the typical hallmark of entrapment: the third party, doing nothing, not present, and unable to act or exert power, may win because of the counterproductive actions of the negotiating partners.

In this exercise, two negotiation teams decide on the price of oil or other product deliveries to a third country. In the first round, the delegations decide on a price without being able to negotiate on it. In a second, third, or fourth (etc.) round, parties may bargain about the price to be set for the round under consideration. The game master can introduce variation by calling for negotiation in only even-numbered rounds, inserting a mediator, adding additional negotiators to the actual talks, calling for an international conference of all parties, or doubling or tripling the stakes. In a normal game, the parties discuss their strategy and tactics and formulate a mandate for one of the team members who is sent to meet the envoy of the opposing side. The two negotiate a price, but they need to 'sell' their results to their own delegation. The delegation then either decides to stick to the agreement or to renege on it. Only after they have taken their final decision at the end of each round do the teams hear the results.

This creates, of course, the typical insecurity of the prisoner's dilemma, or a price war (Saner 2005, 93-100). Teams are inclined to start in an avoidance manner by setting the lowest price on which they cannot be undercut. In a subsequent round, they try to negotiate trust and to raise the price for the absent third party. If both raise their prices, the third party suffers. If one of the two decides on a lower price than its counterpart in the negotiation, that party undercuts the market of the other side and therefore makes a good profit. The third party, by choosing the cheapest product, therefore provides that product's party with a relative gain, while the opponent who set too high a price makes a relative loss. The losing side normally retaliates by lowering its price at the next step and both often end up charging the lowest price possible. They are in a mutually entrapped situation, which is beneficial for the consumer country. The producers can only escape from the trap by investing in their mutual relationship – that is, by risking a gambit, by conceding in the next round, and thereby compensating the side that made a relative loss in one of the earlier rounds. In most cases, the teams end up with a relative joint loss. In some cases they regain trust and end up well. In exceptional cases, by keeping their promises from beginning to end, they do not become trapped in the downward spiral of mistrust.

These oil-price exercises are a fine illustration of the impact of successive rounds on tendencies towards entrapment. The repetitive character of the rounds raises the tension, but the repetition is also a resource. It creates opportunities for doing better and restoring

trust, as time is available. Depending on the skills and styles of the negotiators, their communication with each other and with their own party is decisive in overcoming the tendencies towards entrapment. The game therefore also demonstrates how effective negotiation can offer the option to restore trust and escape entrapment. Handling the emotional side is an essential factor here. More than the actual relative losses, emotions are the difficult factors in the game. People feel betrayed: they are angry and want revenge. They end up in an entrapped lose–lose situation. They could escape, but they are often unwilling to take the risk. They prefer to punish the other side, and thereby punish themselves as well. They know that a good settlement would be good for both sides, but they no longer want the other side to benefit. They are prepared to lose providing that the other side loses as well. Although they normally start out with full confidence in the other party, the structure of the game often leads them into distrust and entrapment that they cannot reverse and overcome (Winham and Bovis, 1978; Griessmair and Koeszegi, 2009).

Levels

Intrapersonal

Given that human beings react not only to their environment, but at least as much to their inner world, entrapment cannot be seen solely as a contextual development. To adapt Marx, to a large extent, the underlying structure determines the super structure. The psyche of the negotiator is as important to understanding the mechanics of entrapment processes as the factors analyzed in the section on characteristics. The inner world of the negotiator can be viewed from many angles, but here we limit them to the question of how to deal with the psychological dimension of one's own behaviour and the actions of the other side in the context of the entrapment process in international negotiations.

In psychoanalysis, we need to examine the negotiator's past to understand part of his or her reactions during the process of entrapment. As this process develops and stress builds up, personal characteristics start to play an increasingly important role. Matters and feelings that lurk in the shadows will appear as higher levels of stress force them out into the open. When these become explicit, they affect the entrapment process as an important semi-autonomous factor. Furthermore, negotiators themselves spend a lot of energy trying to understand the other party, and thereby forget about their own psychological processes. If the negotiators are part of the crisis they are bargaining about, there is a serious risk that they will be carried away by their own experiences and traumas. They become ensnared in their own and their opponents' psychological frames, and thus complicate and exacerbate the entrapment process as it proceeds.

As it is impossible to dig into the psyche of the other negotiator, it is absolutely essential to at least investigate the background of one's opponent and the culture and political history of his or her country, while at the same time being aware of one's own culture and experiences, and their impact on one's own behaviour. Thus, for example, it is difficult to judge the negotiation behaviour of Armenians in negotiations with the Turks if one is unaware of the genocide that took place in the early twentieth century. How could we judge Israel's negotiation behaviour in talks with Palestinians if we were to overlook the *Shoah* (Holocaust) and the probability that old enmities and sufferings would affect negotiations with others who might also be seen as enemies? This shadow of the

past, the projection of old images on fresh situations, is quite a common phenomenon in international relations, not only in the Balkans, the Caucasus and the Middle East, but also in Western Europe between, say, the French and the Germans, the Irish and the British, and so on. Negotiators have to live with these 'facts of life', and, since they cannot be stamped out, teach themselves how to deal with them.

To observe the behaviour of the opponent is the second tool that negotiators use to understand better the motivation and psychological needs of those on the other side of the table. Non-verbal behaviour, especially non-verbal leaks, unveils the real intentions of the negotiator. However, for a non-expert it is extremely difficult to read non-verbal behaviour well (Goodfield, 1999). Behavioural analysis is not sufficient alone and has to be supplemented by the background knowledge mentioned in the preceding paragraph. One may combine both by making good use of the corridors. In the informal talks that take place, such as in plenary sessions, both verbal and non-verbal signals should be registered. However, informal talks may disclose more about the personality of the other negotiator, while in plenary sessions we are probably limited to observations of more superficial signals. To probe deeper in informal talks, it is often necessary to open oneself up to an extent that could be dangerous during the rest of the negotiations, as it could give the other side material that could be used for blackmail purposes. On the other hand, trust can only be established by opening oneself up, at least to a degree. This is one of the more difficult dilemmas in negotiation processes in general, and in entrapment in particular. Openness can work both ways. There are many dreadful examples of negotiators doing things to cover up mistakes that, when discovered by the other party, trigger serious entrapment processes.

All negotiators view reality through their own spectacles: these are necessary if one is to get to grips with reality, but they also shape and colour the situation that one observes. 'The moment we want to say *who* somebody is, our vocabulary leads us astray in saying *what* somebody is [...] with the result that his specific uniqueness escapes us' (Arendt, 1958: 181). The greater the gap between oneself and the other negotiator, the greater the risk of serious distortion and the greater the risk of miscommunication. Being misled by one's own and the other negotiator's misperceptions creates an ideal breeding ground for entrapment. This leads to the conclusion that one must check negotiators' understanding of their own mandate *and* the negotiation process. They will also need to check their own perceptions, especially in processes that are prone to entrapment, since misperceptions are one of the main sources of entrapment and one of the most difficult to eliminate.

Interpersonal

The chemistry between negotiators is one of the factors that determines the failure or success of a negotiation. If the personal chemistry is not good, entrapment processes are unlikely to occur as a result of the psychological dimension of the process. Negotiators who have negative feelings towards their opponents are very careful not to become trapped: negotiators are unlikely to be trapped if they feel they cannot trust the other party. The paradox of entrapment is that the negotiators need to build trust for the trap to work, and since entrapment is not just a question of creating a one-time trap situation, trust needs to be implemented in such a way that the other side only starts to mistrust the opponent when it is already too late to withdraw. However, since entrapment also

very much depends on the situation and the way in which that situation arises, outright deception may not be necessary. In addition, the action is mainly undertaken by the entrapped party, not the entrapper, yet it is vital that the entrapped side takes the view that the only way to escape the trap is to move forward, not to withdraw. It is here that the entrapper needs to create certain carrots and sticks with which to entice or goad the other party into the trap.

The relationship between the two parties is therefore an important factor. It might be argued that if the negotiators know each other well, entrapment would be unlikely to occur. After all, ambiguity is an important element in entrapment. However, it could also be argued that negotiators who do not know each other well view the other side's actions in a more distant and rational way. They may therefore notice the entrapment signals quite early in the process. Those who are emotionally close to the other party, by contrast, may overlook the signals of entrapment, since their feelings prevail over their reason. Indeed, many entrapment situations occur if there is emotional closeness between the parties. Emotional closeness blurs personal views, which have already been shaped by past experiences. It is extremely difficult to change one's focus from what one is accustomed to or expects, and to see things differently.

Here we have another paradox in entrapment negotiation. To avoid being entrapped, one has to try to understand the other party. It is therefore necessary to keep an eye on the psychological make-up both of the other party and of oneself. However, one should not become engrossed in this, as it distorts one's clarity of vision, which can equally lead to entrapment. Emotional closeness should therefore be avoided, as it is one of the elements in entrapment processes. The closer people work together, the more likely they are to become emotionally attached and the more likely they are to become entrapped. Hence 'President Carter ultimately lost faith in the reports of his 'man-on-the-spot' in Tehran, William Sullivan. But [...] Carter continued to rely on some of Sullivan's reports for some time [...] and [...] did not dispense with a resident ambassador but sent out a second one' (Berridge, 1995: 42). Another example is provided by the Dutch Foreign Ministry during the Dutch Presidency of the EU (Van den Bos, 2008), when a group of diplomats who worked on a draft treaty for the Maastricht meeting knew each other well and held the same views about the desired content of the treaty. They turned a deaf ear to warnings from the Dutch Permanent Representation in Brussels that the Germans would not agree. This 'groupthink' led to entrapment. Diplomats are in general quite open to signals from the outside world. They have developed a sixth sense about potential traps in international relations. Civil servants, however, are often not very sensitive to the entrapments of international politics. As civil servants are becoming more important as international negotiators and are even taking over the hegemony of the diplomat within the EU (Meerts, 1999), entrapment processes may become more frequent and more successful in the sphere of international relations. In general, negotiators should be open to one another, but in some cases it can be useful to avoid being influenced by the people at the other side of the table. The famous Dutch captain of industry, Frits Philips, 'admonished his negotiators not to listen too well to their opponents because by listening they would run the risk of being convinced' (LePoole, 1991: 34). At the same time, however, negotiators should be close enough to their opponents to detect certain signals that can be used to avoid entrapment.

National

Systemic factors are also at work. If a society is very individualistic, entrapment in negotiation may be less likely, whereas if a society is more collectivist, entrapment may occur more often. Geert Hofstede defines individualism as a situation in which people look after themselves and their immediate family only (Hofstede, 1980). Collectivism is seen as a situation in which people belong to in-groups (families, clans, or organizations), which look after the groups in exchange for loyalty. In a collectivist political system, civil servants see their ministry as a network of alliances, whereas in an individualistic political system, the ministry may be seen as a machine. In an individualistic system, people may be less vulnerable to entrapment, as they are less dependent on relationships. In Asian countries, which often score high on collectivism, entrapment may therefore occur more frequently than in Europe. However, to claim that entrapment is encountered less frequently in wealthier countries than in poorer countries would certainly be going too far.

Interpersonal communication depends partly on the systemic environment, and that environment differs depending on the society or the ministry in which one lives or works. Individuals, however, exercise their own judgment as well, and they can go against undercurrents in the system within which they operate. People's characters also influence their interpersonal relationships in an entrapment situation, their norms, their values, their life experiences, and, of course, their living conditions. Hofstede also introduced the distinction between competitive and cooperative societies, although he used different terms (Hofstede, 1980): in competitive societies, the dominant values are achievement and success; in cooperative societies, the dominant values are caring for others and quality of life. To entrap another party is a competitive, or distributive, activity. We may therefore expect entrapment to happen more often in societies in which negotiators take a competitive stand. In line with this, we may expect entrapment to be more frequent in distributive (that is, win–lose) negotiations than in integrative processes.

International

Entrapment processes occur abundantly in negotiations between states and within international organizations such as the UN, the African Union, the EU, or the Association of South-East Asian Nations (ASEAN). Entrapment processes in international politics often start with serious misjudgements of the intentions of countries that are perceived as enemies (Rivera, 1968: 71). The United States became entrapped in Vietnam, just as the Soviet Union became entrapped in Afghanistan. '[The US was] caught in an intervention which cannot be brought to a successful ending [… while being] reluctant to admit defeat' (Frankel, 1969: 232). The consequences of entrapment at the international level are more serious than those at the national, interpersonal or intrapersonal levels, but are they more likely to occur? Entrapment may be a greater danger at the international level because the consequences may easily become out of control. There is no international authority strong enough to exert the same degree of control as states can. However, precisely because of this lack of control, which can be seen as a sign of less intimate relationships, entrapment may occur less often than at other levels. If it is true that entrapment is more likely if parties are closer to each other, the lower of the four levels (the personal level) may show a higher frequency of entrapment than the higher levels (the national and international

levels). Also, if the higher the level and the more serious the consequences to be faced, parties may (or at least should) be more vigilant against it.

The consequences of entrapment in international negotiations can be very far-reaching:

> Caught up in the investment that has already been made in some course of action, foreign policy decision-makers may find themselves unable to bring to bear the kind of rational, dispassionate analysis that is necessary to make wise decisions in the throes of international crisis (Rubin, 1991: 224).

Since entrapment may occur less frequently at the international level than at other levels, negotiators may be less prepared to deal with it. However, the effect is such that diplomats and other negotiators need to be trained to be aware of the phenomenon. If the parties decide not to be restrained, international cooperation and control will break down. An example may be found in the decision of the North Atlantic Treaty Organization (NATO) to attack Serbia to gain control of Kosovo. Since the UN Security Council was unwilling to agree to such a step, NATO either had to settle to do nothing or decide to circumvent the UN. NATO decided to take unilateral action and as a consequence it became entrapped in the Kosovo situation. It was only through the use of excessive force that the organization managed to destroy the trap (and Serbia in the process).

In international negotiations, as in other negotiations, it is often the more powerful party that becomes entrapped through its own actions. Entrapment is a tool of the weaker party and a trap for the strong. Guerrilla warfare is based on the same principle. The weaker side tries to bog down the stronger party by avoiding direct confrontation, luring the stronger party into its web. Numerous examples of this kind of entrapment can be found in warfare, such as the weaker Flemish foot soldiers who lured the heavy French cavalry into the swamps during the Battle of the Golden Spurs in 1302, or the Mongol horsemen who avoided direct confrontation with the heavily armoured European knights during the Mongol invasion of Europe in the thirteenth century, but attacked them first with arrows until they were so weakened that the lightly armed Mongol horsemen could easily defeat them. Weaker parties look for the weak spots of their more powerful opponents and then exploit those weaknesses to entrap them. The problem of entrapment at an international level is not only the seriousness of the consequences, but also the difficulty of repairing the damage done. Once a party has been entrapped, no other mechanisms are available to make good the damage, so when more powerful countries entrap smaller ones, there is a risk that the smaller countries may not survive.

In multilateral international negotiations an additional problem is that of coalition-building. Seeking allies does help weaker parties to survive in entrapment situations, but it creates more entanglement at the same time, which makes it more difficult to free oneself from the spider's web: '[I]f you are representing some group or constituency, it may be hard for you to explain sunk costs; once engaged in the negotiations, you may be forced to stay longer than you want' (Raiffa, 1982: 89). At the same time, one's coalition might become more dependable on the other caucus 'if the no-agreement alternatives of one coalition improve, the zone of possible agreement [...] correspondingly shrinks' (Lax and Sebenius, 1994: 182). To steer away from such a situation is more difficult if a whole group

of countries is involved, with all their face-losing fears. To step out of the coalition might be seen as treason. Such defection is not easily accepted by the more powerful member(s) of the group, which will use the resources they have to stop the smaller country that tries to withdraw and thereby weaken the allied forces. 'If an organization has the ability to exact a high price for exit, it thereby acquires a powerful defence against one of the member's most potent weapons: the threat of exit' (Hirschmann, 1972: 96).

Factors

Planning

If there is one way in which a party can save itself from becoming entrapped, it is by carefully planning the negotiation in which entrapment may arise. Overall planning, including strategy, is probably the best tool by which to avoid entrapment. Overall planning not only reveals potential traps, but also indicates potential linkages and opportunities for package deals. One of the characteristics of the entrapment process is over-commitment to certain issues, which creates blind spots. This problem can be alleviated by incorporating other issues: the broader the net, the less likely entrapment is. The greater the number of issues that are brought into play, the greater the number of escape routes that are available. What are the options in creating a strategy? Looking at the Thomas–Kilmann (Thomas and Kilmann, 1974) model of determinants of conflict behaviour, we can distinguish five main strategies: competition; accommodation; avoidance; compromise; and collaboration (Saner, 1997: 111). In general, parties that employ the first two strategies are more likely to become entrapped than parties that use the last two. Since parties may move from one strategy to another as the context changes, the Thomas–Kilmann model actually provides for sixteen potential strategic paths.

Competition is an effective strategy for a situation in which the stakes are high and the competitive party has a power advantage over the opponent. At the same time, the interdependence of interests and the quality of the relationship may be relatively limited. A competitive strategy may lead to entrapment because the weaker party can use the assertiveness of the stronger party to entrap it in a situation in which the best option is to go on, moving deeper into swamps that are not yet apparent. In my training groups, negotiators often score quite low on competitive behaviour, unless they have experienced warlike situations from which they have learned that competitive behaviour leads to the resolution of conflicts in ways that, for them at least, are effective. Israelis and Croats, for example, score high on competition in the Thomas–Kilmann self-assessment exercise. Men tend to score higher on competition as a natural mode of conflict resolution than women, but there are exceptions. Women who have to fight for their posts as diplomats may score high on competition as an intuitive mode of conflict management. In an Omani group, the highest score on competition was achieved by the only woman diplomat.

Accommodation, the converse of competition, may also lead to entrapment. A party that continuously appeases the other side quickly finds itself trapped through salami tactics applied by the other side. That party will be eaten bit by bit, slice by slice. While each slice is digestible, the final result will be disastrous, as the opponent will have gained much more than originally foreseen. By focusing on short-term problems, the long-term effects remained out of sight.

In distributive international negotiation processes, the competitive side generally wins and the accommodating side generally loses. In this win–lose situation, compromise may provide a middle-of-the-road solution. In any event, strategies along the win–lose dimension run the risk of creating opportunities for entrapment. Accommodation, like competition, is one of the strategies that score low in self-assessment exercises. Negotiators dislike making concessions; they prefer other modes of conflict resolution. Accommodation generally scores higher with women than with men. In some countries, accommodation hardly exists as a mode of negotiation: negotiators would rather fail to reach agreement than reach an agreement that benefits the other side as well as their own. The win–lose axis is very much the emotional dimension in the model. Negative feelings towards the other party may lead to competitive (or avoidance) strategies, while positive feelings may lead to accommodative (and collaborative) approaches. EU negotiators score relatively high on accommodation.

Avoidance can be seen as the start of a collaborative strategy. The avoidance–compromise–collaboration axis could be described as the win–win dimension, provided the parties are moving from avoidance towards collaboration and not from avoidance to competition or accommodation. Avoidance can be seen as the most effective of the anti-entrapment strategies. However, since action is obviously needed to create a negotiated settlement, avoidance is also one of the more powerful anti-negotiation strategies. Avoidance is only effective for a while. For example, in recent conflicts, as long as the Western allies had air superiority, both Saddam Hussein of Iraq and Slobodan Milosevic of Serbia confronted them with an avoidance strategy, preferring to avoid confrontation with a stronger enemy than to be defeated in open battle. In that sense, avoidance may be the most effective strategy for the entrapping party to adopt, to lure its opponent into the trap by withdrawal. In the Thomas–Kilmann exercise used during workshops (Meerts, 2014: 12–14), men score quite highly on avoidance as a preferred mode to deal with problems. In addition, we see that people who have suffered in conflicts also often choose avoidance as their main intuitive strategy, as a way to wait for better times and not meanwhile to waste resources. Palestinian intellectuals, for instance, score highly on avoidance as a preferred mode of behaviour in conflict situations.

Collaboration or cooperation is the hallmark of integrative bargaining, under the motto ‘we either sink or swim together’. By integrating values, this approach leads to a negotiation result whereby each side wins more than it loses. Collaboration that is genuine may be a good strategy with which to counter entrapment. If collaboration is competition in disguise, however, entrapment is just around the corner. As compromise is halfway between avoidance and collaboration, it may be an ill-balanced strategy. It is not as effective a tool against entrapment as avoidance or solid collaboration. It leaves open the danger that parties will fall back into competition or accommodation. In the oil-pricing exercise described above, compromise is a dangerous halfway house on the path from avoidance to collaboration. If one of the parties is lured into competitive behaviour, a relapse into avoidance, and thus to lose–lose situations, is imminent. Normally, both men and women score high on compromise as their natural inclination to deal with conflicts. Consequently, by definition, they are not prone to entrapment, but a change in circumstances may signal that entrapment is luring. Women often score quite high on

collaboration, and it is often their second highest score (in contrast, men's second highest score is avoidance).

Information

An important anti-entrapment tool is information. Staying well informed helps negotiators to avoid entrapment; being ill informed increases one's risk of entrapment. As more information trickles in, the entrapped party notices that the trap is tightening, and that the swamps (if they have spotted them at all) are actually much more extensive than they thought. The pathways through the swamps may be narrower than expected, and more information is needed. However, in the negotiation processes, complete information is not available. The parties need to enter the process to obtain more information, but in doing so they need to realize that entrapment is one of the factors with which they have to reckon. In international negotiations, it is even more difficult to collect trustworthy information. It is therefore absolutely vital in negotiations with other states to be as well informed as possible. As intercultural and other factors add to the fog, reliable information is a prerequisite for avoiding entrapment. Besides having good security services, embassies can be very useful in helping negotiation teams prepare by providing them with in-depth and (hopefully) reliable data. However, it is as important to use the available information wisely and in an appropriate manner. As the 'rogue trader' who brought down Barings Bank in early 1995, Nick Leeson, wrote: 'The odd thing was that although people were aware that the numbers were big, they weren't as frightened by them as they had been by the small numbers' (Leeson, 1996: 177).

Information, and especially misinformation, can also be used to create entrapment situations. As long as the Russian people remained ignorant of how the war in Chechnya was proceeding, the danger of Russia's President Vladimir Putin becoming entrapped was relatively slight. In contrast, the United States' government was entrapped by news coverage of the Vietnam War, between North Vietnam and the Vietcong on the one hand, and US domestic public opinion on the other. And in the Second World War, the Germans used misinformation to trap members of the Dutch resistance in what became known as the '*England Spiel*' (England Game). Information about possible coalition partners in a negotiation, about alternatives, about the strengths and weaknesses of the other party, and about the road ahead, is vital to create or avoid entrapment. The Germans entrapped their Jewish victims by giving them false information about the concentration camps. Pretence is an important element in entrapment, so to be well informed is often an effective antidote. However, this antidote works only if the information is credible and if it is accepted by the negotiation party. If the negotiation party doubts the accuracy of the information, then entrapment will again be imminent. Why, for instance, did Stalin not heed the warnings he was given that the Germans were on the verge of attacking the Soviet Union?

Communication

This brings us to communication as a strategic device with which to create or avoid entrapment. Entrapment may occur through lack of communication, but in general communication is a neutral tool that can be used either to create or avoid entrapment. The crucial factor, of course, concerns the reliability and quality of the communication.

The entrapping party can communicate a willingness to negotiate an agreement that is favourable to both parties. By concealing matters that may lead to entrapment and by stressing issues and options that may look attractive to the other side, the entrapper can try to create a trap. From the point of view of honesty, this can be seen as untrustworthy behaviour. In diplomacy, however, such communication is more often the rule than the exception. Diplomatic negotiators are inclined to tell the truth, but not the whole truth, and by not mentioning certain matters, they construct a partial image of the real situation. They know this about each other and are therefore cautious in their communication. Diplomats communicate by sending the signals needed to allow the negotiations to progress while still keeping their options open as much as possible. This forces diplomatic negotiators to know the 'language' of diplomacy, to know the 'codes', and to be able to decode them.

This caution shown by diplomats in communicating with others is often a major source of irritation to people from other professions in which communication is more direct. As a result, misunderstandings may occur in negotiations with non-diplomats. Military officers, in particular, are often outraged at the 'fuzziness' of diplomatic communication. Civil servants, too, are less inclined or able to use diplomatic smokescreens. Diplomatic ambiguity may lead to entrapment, but diplomats know how to handle it and their patient approach often produces dependable outcomes. A civil servant who is more forthcoming and seemingly more assertive, on the other hand, may form a prime target for entrapment. Viewed in this light, diplomats – with their special mode of communication – are well armed against entrapment, whereas other international negotiators may be more prone to walk right into the swamps, with disastrous consequences. Since non-diplomats increasingly play a major role in international discussions, especially within the EU (Meerts, 1999), entrapment may occur more frequently in future negotiations.

By keeping lines of communication open, by creating a good understanding and a positive atmosphere between the parties, and by using communication as a tool to improve transparency, it may be possible to keep entrapment at bay. After all, entrapment only flourishes when mists shroud what is going on. Transparency lifts the mists to reveal the swamps ahead and can thus save one of the parties from becoming entrapped. As diplomats are (or should be) communicators *par excellence*, they should be able to avoid entrapment or to use it as a defence weapon against non-diplomatic international negotiators. Indeed, entrapment is often a tool that they need, as diplomats have to rely on words to achieve their goals, unable as they are to use force. Diplomats can certainly ask others to use weapons of force, but they themselves must rely on their verbal and non-verbal behaviour. Communication is at the heart of their profession, and since they have fewer means at their disposal than other professions, they need to resort to those strategies that are available to the weak, of which entrapment is one. This implies that diplomats are also entrappers *par excellence*. If this is true, and if diplomats are, indeed, likely to be less dominant in international negotiations in the future, we may see a decline in the frequency with which entrapment occurs in that context.

Control

Entrapment is a process whereby one party gains control at the expense of the other. To create entrapment, a party must therefore aim continuously to gain more control over the other side (that is, to change the balance of power in its own favour). Of course, entrapment

also creates its own shift of power, in a mixture of transitive and intransitive effects. Once the process has started, this shift of power becomes visible. While one side tightens its grip on the other (or watches it embroil itself in a situation in which its options diminish), the other side senses a loss of control. In entrapment, this shift in control from one side to the other is not a zero-sum game. The party that gains the upper hand certainly acquires greater control, but an essential part of entrapment is that this increase of power is not blatant. The entrapped party loses a great deal of control because of the situation that it encounters. In other words, the context itself becomes a controlling device. However, this device is only partially in the hands of the entrapper: the entrapper can only control the situation up to a point, and does not have full control. The situation itself plays a kind of autonomous role in the loss of control by the party being entrapped, which is only partly managed by the entrapper, who sometimes is not managing it at all. If this was not the case, it would be impossible to explain cases of double entrapment, in which both negotiating parties become trapped and no third party can be held responsible (see, for example, the oil-pricing dilemma described above).

To avoid entrapment, it is therefore necessary to keep control of the situation, and to keep control, it is necessary to have an overall strategy, to be well informed and to create transparency through effective communication. But this is not enough. It is easier to exercise control if one is well organized. Internal organization is almost a prerequisite for external control. Thorough decision-making, minimum goal-setting, threat reduction, and accountability for decision processes and outcome (Simonson and Staw, 1992: 421) are internal control mechanisms that dampen the risk of entrapment. To keep control, one needs to have alternative escape routes in place and to use them if necessary. Control can be kept up to date by participating in good coalitions. However, such bandwagons also have negative effects on control and may enhance entrapment instead of stopping it, as discussed above on entrapment at the international level. If you are weak, ally yourself with those who are stronger. Surely, this is one of the central tenets of the EU – or NATO, for that matter: have skilled negotiators to exercise control and to use it effectively. To have control over the situation is, indeed, a necessary prerequisite to avoid entrapment, but power as such is not enough. Power itself can lead to entrapment if you try to control the outcome of the negotiations; power used to control the environment of the negotiations can lead to entrapment avoidance.

Case Study

Roy Lewicki wrote a very illustrative case on entrapment, 'The Pacific Oil Company', which effectively conveys the idea to both skilled and unskilled negotiators (Lewicki, 1993: 659–687). Pacific Oil (in reality, Gulf Oil, for these negotiations apparently actually took place) supplies Reliant with a chemical that Reliant uses to manufacture plastics. Some time ago, the parties agreed a contract at a price favourable to Pacific. However, the contract has to be renewed in two years' time, and conditions are changing from a seller's market to a buyer's market. This change in the environment persuades the people at Pacific's Paris office to decide to aim for early renegotiations. Although Pacific's head office in New York seems to like the idea, they issue no explicit mandate to the Paris office to reopen negotiations, one reason being that Pacific's management structure is unclear.

Meanwhile Reliant has a pyramidal organizational structure. In the confrontation to come, this difference in structures favours Reliant: a more transparent command structure always gives a party a clear advantage in conflict situations.

Lesson One: *To avoid entrapment, make sure that you have received a clear mandate from those who have the legitimate power to issue it and make sure that internal information flows and communication are transparent and effective*.

Since Pacific was (and always had been) more powerful, the company's Paris negotiators entered the renewal negotiations full of self-confidence. They prepared the negotiations carefully, and believed that the talks would be short and deal with only one issue, the question of price. They had always been able to convince the other party to accept the price they preferred. As a result, they failed to consider the possibility that things might be different this time. In planning for only one issue, and being blind to the need to create an overall strategy that covered all the elements that could arise during the negotiations, they overestimated themselves and underestimated their opponents. The whole process became fuzzy, opportunities for package deals went unnoticed, and unnecessary concessions were made. Furthermore, time could not be managed, as no deadlines were set. And as time worked in favour of Reliant, Reliant's delaying tactics had disastrous consequences for Pacific.

Lesson Two: *To avoid entrapment, make sure you have a realistic perception of the strength of the other party, develop an overall strategy, and set deadlines*.

Right from the start of the negotiations, Pacific was eaten up bit by bit as a result of Reliant's 'salami tactics' (Van Houtem, 2010: 114–116). The Pacific people thought that they had a good relationship with Reliant, but failed to realize the significance of the fact that the Reliant team did not contain people they knew from previous negotiations with the company. These new negotiators felt no loyalty towards the Pacific team on account of any earlier relationship, and no emotional attachment to Pacific that might hold them back in their entrapment strategy and tactics. On the contrary, their attitude towards Pacific was actually rather hostile. This situation often occurs when a weaker party feels that it is being obliged to accommodate a stronger party. It is interesting to note that in such cases the dominant party does not share such negative emotions, having no reason to do so. As a result, it often fails to notice the hostile attitude of its opponents and the consequences that this may have for the negotiations. When this hostile attitude eventually becomes apparent, it often comes as a surprise to the stronger and more successful party and leads to cognitive dissonance.

Another relationship issue that played a part in the Pacific–Reliant negotiations was the distorted communications between Pacific's head office in New York and the branch office in Paris. New York had not really been following the negotiations and was surprised by the bad turn that they took. By the time the bosses became aware of it, it was too late to do anything: things had gone too far. The head office may have had a good reason for not monitoring the negotiations closely: they had more important things to worry about and they wanted to keep their hands clean. However, this meant that they shied away from taking responsibility. Paris, for its part, was happy enough not to have to deal with 'unnecessary' intervention by people 'who don't know the situation' in the field: a typical embassy–foreign ministry relationship. The problem was made worse because the Paris

people were old colleagues and worked very well together. As a result of this excellent relationship, they did not criticize each other, which led to unrealistic 'groupthink'.

Lesson Three: *To avoid entrapment, make sure that you check your assumptions about relationships, and create good, clear, workable relationships, but avoid becoming too close, and avoid the possibility of emotional blackmail.*

Before the start of the negotiations, Pacific's Paris team had received reasonably optimistic information from the head office in New York about how the market was developing, despite the shift from shortage to abundance of the product they were selling to Reliant. They were also told about Pacific's plans to build its own factory for making plastics. This alternative to a deal with Reliant – with Pacific supplying chemicals to its own future factory – gave the negotiation team a powerful counterweight to the shift in market conditions. However, without consulting the Paris team, Pacific's head office decided to drop the idea of building its own chemical factory, and made this information public straightaway. This meant that, at a stroke, they deprived the Paris negotiation team of an important means of control. This sort of thing is not uncommon – the lack of consultation, the unthinking publication of information, and general ignorance at head office about what is going on at the branches. In the overall balance of interests, one set of negotiations is often only part of a greater whole. Higher levels may decide to sacrifice those negotiations because there are more pressing priorities. They may not bother to inform or consult the team involved – they are seen as merely minor executive players. Unless those negotiations fit in with their line of thinking, they tend to overlook them. Being unimportant, they can be discarded. Moreover, if they consult a minor player, they are afraid that this may be interpreted as weakness on their part as a macho decision-maker.

However, as insignificant as these negotiations may have been to the managers in New York, they were nonetheless very important to the negotiators in Paris. The New York people were not emotionally attached to the negotiations with Reliant. Their interest was purely material. Of course, investments had been made and, of course, they would lose something, but they had to set priorities and the Reliant negotiations were not an overriding priority. The Paris people, however, had invested their credibility, their face, their energy and their self-image in these negotiations. For them, these negotiations were their only priority. This meant that they were unable to exit the negotiations and had to bet more money to try to recover their losses. They were emotionally trapped and could not turn back. Pacific's headquarters was trapped in material terms, but had enough resources to pull out. In the end, Pacific's boss flew to Paris and used the 'take it or leave it' tactic on Reliant and Reliant signed the contract. Why? Because it was now so valuable to Reliant that by not signing the contract it had more to lose than to win. It no longer had any 'best alternative to the negotiated agreement'. The power relationship had shifted again.

Lesson Four: *To escape from entrapment, make sure that you are well represented in the power centre of your organization, and take care that those in power see your priority as their priority.*

To summarize, the Pacific negotiators became entrapped because they had no overall and integrated planning, incomplete information, clogged internal and external communication, and no control, as they had no power over the negotiation process itself or over top-level decision-making. They were therefore unable to select the most

attractive options. The situation became more uncertain as the process unfolded. The investments mounted and, as long as the final stage could not be reached, the returns were virtually nil. Meanwhile, Reliant's 'salami tactics' resulted in delays and a lengthy series of concessions. These repeated concessions tended to hide the extent of the losses and make them more acceptable. The rule of thumb, 'whenever you offer a concession, ask for one in return', had not been applied. Emotional factors made it difficult to withdraw, interpersonal relationships broke down or lost their function, and even national differences may have made matters worse because of communication problems among Americans, French and Germans. Finally, the international dimension of the negotiations made matters even more difficult to control. The entrapment worked, in the sense that one of the parties gained more out of the negotiations than the other. The process could only be stopped by an actor who was not closely involved in the negotiations, who intervened when the potential agreement had become too valuable for the winning party to lose it. Alternatively, this could have been a decision-maker who had been opposed to the action of his predecessor and who came to power in a democratic or an undemocratic way, be it a new civil president or a military junta.

In Conclusion

Entrapment is a decision-making process whereby individuals escalate their commitment to a previously chosen, although failing, course of action to justify or recover previous investments. Entrapment is an intransitive process, a process that happens beyond the will of the entrapped, and as such is difficult to see in its early stages of development. Unfortunately, by the time that entrapment has begun to become apparent, it is often too late to escape from it. This is one of the dangers that countries most fear when they have to decide on peacekeeping or peace-enforcing matters. Gross violations of human rights, refugee flows and media coverage can draw nations, individually or in groups, into entrapment processes (Hippel, 2000: 98–100).

The 'do something' effect can entrap people, organizations, countries or groups of countries (Both, 1995; Kamp, 1998; Cha, 2000; Blandy, 2009; Buergin, 2010; Morin, 2010). To avoid entrapment, negotiators should have a clear understanding of their own aims and the aims of the other party. To escape from entrapment, a party must regain control over the dynamics that operated beyond its control. Through careful and overall planning, sufficient information, transparent communication and control over the inner and outer environment, it is possible to contain the impetus towards entrapment. In other words, to avoid intransitive entrapment calls for careful and forceful negotiation tactics, with internal support and external control built up as much as possible, and information and communication keeping the actors up to date. Sometimes, too, these actors need to be changed: 'New senior executives are likely to provide a fresh perspective' (Staw, Barsade and Koput, 1997: 140). Exit options are vital to counter entrapment processes (Ross and Staw, 1993: 726–728).

Entrapment can also be used in a transitive way, as a deliberate strategy on the part of one negotiating party over the other. Entrapment is a powerful option that is open to the world's less powerful countries. Just as in judo, such countries can try to use the more

powerful nations' strength and assertiveness so that those nations become entrapped through their own actions. To use entrapment as a transitive strategy, a country should plan carefully to create as many smokescreens as possible, while laying bait down at the same time. It is not enough just to have a carrot to lure the opponents into a process in which a number of traps are carefully hidden along the way. One should also have a stick available to narrow down the other side's options.

As the process unfolds, the opponents' choices need to be limited, insecurity generated, and concessions forced – and this will need to be done repeatedly. The other side needs to be driven forward in such a way that, psychologically, it sees the route ahead as the most effective way of satisfying its needs. Feelings of guilt may be very useful in forcing the other side not to leave the charted course. In the interpersonal sphere, the suggestion of a trusting relationship should be created. Care should be taken to arouse no suspicions. National characteristics should also be studied and used. For example, the impatience of the other side can be very powerful in luring it into an entrapment situation; also, honour and fear of losing face are very effective mechanisms. Information should be distorted; communication should look more open than it actually is. All of these mechanisms serve to strengthen control over the other party's crises. Although entrapment can, of course, be used by powerful countries, it is predominantly a strategy used by the smaller countries to compensate for their lack of power.

Yet entrapment within or outside negotiations does not always have to be negative. Entrapment can also have a positive side – and not only for the party that introduces it into the process. Lack of central control (or lack of push) at the international level can easily lead to procrastination, and indecisiveness can easily lead to disaster (although the opposite is also true). In situations that require action, but where countries are unwilling to act because the costs will be too high, entrapment could very well be the answer, as it forces them to act. Natural disasters are a classic example. Investment in combating global warming may not be opportune for any individual country, but the collective community of states will be entrapped in the long run if it does not take appropriate measures in time.

In the case of the Syrian civil war in the second decade of the twenty-first century, we are confronted with an intransitive process: the outside world avoiding entrapment. As a consequence of this 'unentrapment' the war has dragged on, for there is no exit strategy at hand as long as one of the parties does not feel itself to be in a hurting stalemate. Exit strategies in Iraq and Afghanistan were made possible by changes in the American leadership. US President Obama could develop 'unentrapment' by turning the process around. Instead of going deeper and deeper into the conflict, he 'disentrapped' by pulling out little by little: a so-called 'reverse salami tactic'. This exit strategy turned the process upside down by repeating the step-by-step process leading to entrapment in the reverse direction. The smoother the process, the less damage is done to the context and parties. Patience and time are of the essence. It is like unscrewing a screw: to remove the screw one has to stop turning it to the right; the screw must now be turned to the left, but carefully, otherwise it could break, with all the negative consequences that the political, military and diplomatic community strive to avoid.

CHAPTER V

Negotiation and Warfare

This chapter is based on an unpublished paper written by Paul Meerts in 2006, with its abstract published as Meerts (2006b), and includes a paragraph on mediation that is based on Meerts' book review in *The Hague Journal of Diplomacy* (2013a).

CHAPTER V: NEGOTIATION AND WARFARE

Warfare and negotiation are two sides of the same coin and, for this reason, negotiation may be described as 'war by peaceful means' (Meerts 2014b: 4). They are the most important instruments in managing conflicts between and inside states. The question is: which is the most effective? It is often easier to start a war than to negotiate a conflict. Still, negotiating a conflict is more effective, as it avoids personal and material casualties, while the costs are negligible. Casualties not only weigh heavily on the present, but also constrain the future. Traumas created by warfare do not easily fade away. It might – and often does – take centuries before these traumas are overcome. We do not need to go to the Balkans, the Middle East, Africa or East Asia to find traces of wars still impacting upon the present. For example, when Englishmen meet the French, they sometimes show them their right hand as if it draws a bow: a remembrance of the victory of the Black Prince over the French King in the fourteenth Century. While negotiation is more effective in the long run, it does not mean that it is the best tool in the short term.

While we might prefer peace over war as a more effective way of running the society of mankind, it does not necessarily mean that war is the exception and that peace is normality:

> From the point of view of evolutionary psychology, if war is so universal and ubiquitous as has been claimed by advocates of the Universal Human Belligerence theorem, the mere fact [of] peace constitutes a problem, and we would have to develop a theory of peace as an abnormal, anomalous condition (Dennen, 1994: 498).

However, we should keep in mind 'Kant's principle that no one should do anything in war that will make reconciliation impossible' (Randle, 1973: 501). One way to create ripeness for reconciliation is diplomacy. 'Diplomacy, like war, can be seen as a perennial institution, influencing relations between polities throughout history' (Jönsson and Aggestam, 2009: 34). According to Jönsson and Aggestam, diplomatic norms and practices can facilitate conflict resolution through coexistence and reciprocity, open communication channels and shared language, commitments to peace, diplomatic immunities and *pacta sund servanda* (agreements will have to be kept) (Jönsson and Aggestam, 2009: 36–40). They also notice, however, that diplomatic norms and practices could complicate conflict resolution because of problems of precedence and recognition, too much openness, constructive ambiguity and complexity in multilateral and polylateral negotiations (Jönsson and Aggestam, 2009: 40–46). Furthermore, as Iklé has argued, negotiation can also be used to gain time in order to prepare for war, or to stop the other party from going to war until that war is no longer an attractive option (Iklé, 1964: 51). Likewise, negotiation can be used to avoid any

outcome, following the reasoning that the time is not ripe for conclusion as long as the negotiation process is in place – in short, negotiation as deception.

The utility of War and Words

The title of this section on war and words has been inspired by General Sir Rupert Smith's fascinating book *The Utility of Force: The Art of War in the Modern World* (Smith, 2005). The following question comes to the fore: what about the utility of that non-overpowering tool that we call 'negotiation', or in a more narrow sense 'bargaining', in relationship to warfare in risky situations, with bargaining here being part of the much more encompassing process of – in this case international – negotiation? The other author of interest here is the Prussian strategist Carl von Clausewitz, with his saying 'that war is the continuation of politics with the admixture of other means' (Holsti, 1991), which was referred to earlier in this book.

The idea behind this chapter is to compare warfare and negotiation in the framework of inter-state relationships. The chapter therefore looks at the role of the state as actor in both the use of violence against other states, as well as peaceful give and take, because 'Clausewitz regarded the growth of the modern state as the most significant process in history' (Paret, 1976: 3). If we are in agreement with Clausewitz's opinion, we might add that one of the main issues with which states have to deal are internal and external conflicts. The more advanced – in other words 'modern' – states are, the more sophisticated their conflict mechanisms will have to be. Negotiation processes are probably the most frequently used tool of conflict management, and anyway are peaceful, a characteristic that they share with facilitation, mediation and adjudication. 'Negotiating in warfare can be used in different ways. An alternative way of reading Clausewitz would be: negotiating is the continuation of war with non-violent means' (Van Es, 1996: 105).

As a mode for conflict prevention, management and resolution, negotiation has to compete with – or go hand-in-hand with – the use of force, whether for defence, containment, repression, or conquest. What can we say about negotiation and warfare? Are the two connected? How did they develop in history, how do they relate to each other, and did this connectedness change? What do they have in common, and to what extent do they differ? Are they equally effective in dealing with risky situations, or is there more risk involved in using one or the other?

This chapter starts with a short review of the evolution of inter-state ('diplomatic') negotiation and the use of force ('warfare'). In a second step, the nature and characteristics of both conflict mechanisms will be analysed: what is their commonality? Step number three focuses on the differences between negotiation and warfare. Which situations are more apt for warfare, and which for negotiation? What are the consequences of this? Part four deals with the synergy between the two phenomena: whether they go together and if so when? In a fifth step, some conclusions are drawn about the utility of negotiation and warfare in dangerous international relations.

While the application of military means in conflict situations has been the object of study for thousands of years, for example by the aforementioned Sun Tzu (Chung, 1991; Handel, 1992; Hanzhang, 1993), the analysis of negotiation processes is a more recent phenomenon (Hemmer, Garb, Phillips and Graham, 2006: 129–162). Yet both negotiation

and warfare are among the oldest professions in the world (although perhaps not the oldest), not only connected as a means of conflict management, but also as a means of economic and imperialistic expansion. Trade (*negotie* in ancient Dutch) and war have been twins for ages of human history. It is interesting to note that the leisured class of the Roman Empire, the patricians, had two main activities in life: warfare; and negotiation, in the sense of trading.

Historical Background

As mentioned in the second part of chapter II, states settled their conflicts first of all through violent means. City-states fought over resources, as did nomadic tribes whose political structures could be defined as 'mobile states'. 'If anything, war was more central to the politics of the Amarna period than it has been in modern times' (David, 2000: 62). The 'Amarna period' or 'Amarna age' is named after the Amarna archive (fourteenth-century BCE), documenting the diplomatic and military relationships of five major powers in the ancient Middle East: Pharaonic Egypt of Ramses II; Hittitian Hatti of Muwatalli; and Mesopotamian Babylonia, Assyria and Mittani. Although diplomacy – and thereby inter-state negotiation – played a role, it was merely a side-effect of military strength, a tool to serve successful military policies. In an age of naked power, diplomacy played the role of the loincloth, and the power of states was translated into soldiers, not in diplomats. This does not mean that diplomacy was overlooked in ancient times. For Sun Tzu it was a very useful tool in warfare. 'He [Sun Tzu] used to make alliances with forces in order to fight against a common enemy' (Hanzhang, 1993: 27).

Yet as far as diplomacy and inter-state negotiation had a role to play, it was subordinate to the military effort. It is interesting to note here that in some societies this is even true today, because the state has the tendency to define a crisis in the context of its means to deal with the problems at hand. If the state is powerful, it will use the means available. A strong and technologically advanced army is there to be used. '*Si vis pacem para bellum*' (if you want peace, prepare for war) might in theory lead to the prevention of war, as the other side will refrain from an attack, but in practice the temptation to use the tools you have is often stronger than the wisdom to refrain from action. Even though, Sun Tzu thought 'it best to subdue the enemy's army without fighting' (Hanzhang, 1993: 21), and rulers through the ages have used peaceful means to implement their aggressive objectives. Examples include Louis XIV of France, fighting for the expansion of his kingdom in the seventeenth and eighteenth centuries, who used peace talks to divide his enemies, but resorting to war again as soon as their coalition faltered; and Adolf Hitler in 1938 in Munich, who using the mere threat of his army to occupy Czechoslovakia, and later Denmark, without a shot being fired.

There is more to be said, however, about the dynamics obstructing the use of peaceful means. One element is the security dilemma of risk-taking. '*Si vis pacem para bellum*' expresses the fear of being surprised by the other party, of being unprepared for war. It is better not to take the risk of having to rely on peaceful means like negotiation. Having a strong army, however, means a higher risk of using it. One step further, it implies the preventive use of force in order to prevent the risk of losing your dynastic possessions. In the absence of effective diplomatic relations, cooperation could not be sustained, could

not perform as a sufficient guarantee against the 'evil empires'. As words can only function in the framework of diplomatic cooperation, they could not hope for an equal footing with war. Negotiation could therefore not function as risk insurance; its basis was too feeble, trust was lacking, and treason lurked around the corner. In order to prevent the risk of being overtaken, preparation for violence was the only means available, with negotiations in a supportive role.

Many cultures in our modern world still regard the offer to negotiate as a sign of weakness instead of wisdom (Schecter, 1998). Decisions are often made to fight, even if the advantages of dialogue are obvious. The state's face is at risk if hands are reached out to the opposite side, which might undermine the country's credibility, thereby weakening its overall position in the region and in the world. Negotiators are sometimes unwilling to make a trade-off, even if it is more than obvious that they will gain more in return than they will sacrifice, because the loss is more difficult to digest than the fruitfulness of obtaining a concession from their opponents. Moreover, if the other side concedes, there must be something strange about the situation, so how can we be confident that they are not gaining something in secret? It might be a gambit, a bait to catch a bigger fish, or a short-term loss for long-term gains. The psychological mechanism is entrapment, as analyzed in the preceding chapter. According to prospect theory, people – and thus negotiators – will take more risks if they are threatened with losing something than if they expect a profit. This will result in tying negotiators to downward spirals and investing more and more in situations from which they should, rationally speaking, withdraw. Emotions steer rationality and the actor, fearing loss of face, works against his or her own interests. The more powerful states have more face to protect, and are thus more prone to entrapment cycles than smaller states. As already discussed, entrapment can therefore be used as a tactical device by weaker powers, both in negotiation and in warfare.

Over the course of the centuries, war became an extremely costly affair and a severe risk for a state's treasury. The relative importance of negotiation as a cost-effective means of settling conflicts therefore slowly came to the fore. One of the first diplomats to understand this, as illustrated in chapter VII, was the famous and notorious French ambassador Talleyrand. Confronted with the defeat of Napoleon and having to rescue France from oblivion, Talleyrand used the Congress of Vienna negotiations in 1814–1815 to strengthen the French position through coalition-building, meanwhile introducing true multilateralism into the negotiation process. Later, the disastrous twentieth century with its ravaging two world wars showed the ineffectiveness of large-scale warfare in settling international conflicts. It became seen that negotiation often creates options for win/win outcomes. Wars in the past led to win/lose solutions, but modern technology and mass participation created so much devastation that statesmen increasingly preferred negotiation over warfare. The world saw a shift from negotiation as a tool in warfare towards warfare as a tool in negotiation.

One more factor in diminishing the effectiveness of war in conflicts is the growing complexity of states, which became so institutionalized that it is nearly impossible to overthrow them and subdue them on a permanent basis. However, states might be held hostage through nuclear threats. The chance today of being completely overrun is much less immanent than in ancient and medieval times. Add to this the strength of ideology and religion, the interconnectedness of the world through television and the internet, as

well as the availability of modern technology to guerrilla and terrorist forces. In short, leaders started to acknowledge the necessity of channelling, strengthening and protecting negotiation processes as a major tool in international relations. As a consequence, international regimes were created, both on global and regional levels, which were meant to streamline and fortify inter-state negotiation. Regime-building has the important function of diminishing risk through cooperation. Regimes can help to press their member states in living up to the agreements made. Trust and risk have always been a major problem in settling conflicts through give-and-take. Ambassadors were beheaded, or had their beards shaved off if they were lucky, for the sake of showing strength and contempt to the other ruler, thus, in turn, provoking war (Frey and Frey, 1999).

Commonalities

War and words share a number of characteristics, while they differ at the same time. This section focuses on their commonality and asks to what extent common features are applicable to both, looking at the relationship between one of the main formats in which negotiations take place – trade – and one of the main systems in which the use of force plays a dominant role – war. As said before, they often go together in history. Wars opened trade routes or blocked them. Profitable trade links were often created by force and force was needed to sustain them. Yet the trade itself was done by bargaining. Negotiations were the focus; force supported the negotiations. This was an interesting pairing, which conceals another phenomenon: the contradiction between trade (and therefore an important component of negotiation: commercial bargaining); and warfare. They often went together, but like twins it does not mean that they were always identical. In fact, trade and warfare have their own character and characteristics.

Trade and warfare can also be opposed to each other. War diminishes net profits. War puts profit margins at risk, so peace was the preferred option. While violence was often the preferred option in opening trade links and creating monopolies, in order to sustain the monopoly, war should be avoided if possible. This is why colonies in the seventeenth century were mere trading posts, controlling areas around them through indirect rule. It was only in the nineteenth century, the age of imperialism, that European powers substantially expanded the overseas territories under their direct control into full colonies. Portugal and the Netherlands were cases in point.

Using war and negotiation in order to handle contentious issues is, as said before, their main common characteristic. In that sense, they are tools used by other strata in society. Negotiation/warfare is the servant of politicians, civil and military servants, financers, and some religious groups. In other words, it is not an end in itself. Negotiation/warfare is a path, a route, a pathway in dealing with conflict, and this road is walked by negotiators – diplomats, civil servants and merchants – and soldiers, on foot or horseback, boats or planes, tanks or offices. Negotiators and soldiers share the task of dealing with conflicts, being dependent on others in society and judging the circumstances.

What are the best ways to deal with a conflict in a given situation? In order to deal with the context in which they find themselves, both negotiators and military men and women deploy strategies and tactics. They are closely connected to risk. '[T]here is more than one kind of risk in a peace agreement and [...] the type of risk will, to some

extent, determine the kinds of negotiation tactics and resolving formula' (Hampson, 2006). Meanwhile, Clausewitz states that '[t]actics teaches the use of armed forces in the engagement; strategy, the use of engagements for the object of war' (Luttwak, 1987: 239). It seems that this statement is directly applicable to negotiation: tactics teach us the use of bargaining – in the sense of give and take – in the encompassing diplomatic negotiation process; while strategy teaches us the use of negotiation for the object of an agreement. The next few paragraphs focus on strategy in order to look for the commonality and divergence of war and negotiation.

One way to approach strategies is to use the aforementioned Thomas and Kilmann approach (Thomas and Kilmann, 1974). Five modes figure in one model: competition (domination); collaboration (integration); compromise (sharing); avoidance (neglect); and accommodation (appeasement). The order of the strategies here is intentionally in accordance with the Thomas and Kilmann approach, as used to score participants in a self-assessment exercise that they developed alongside the model. This exercise is, of course, only applicable in table-top gaming (simulation exercises) and not in field operations.

To start with: *competition.* When will parties compete with the other side, risking total failure? In both warfare and negotiation, a dominant strategy will be effective and realistic if the stakes are high, while enough power is available to push the other party into agreement. This minimizes the risk of failure and maximizes the chance to harvest as much profit as possible. In negotiation, parties can do this by maximizing their profits in such a way that the other party will – still – not walk out because of future benefits from the dossier under negotiation, or from other dossiers that are of more importance to them. To remain within the realm of negotiation, the other party should not be overwhelmed completely. If one of the parties is brought fully to the mercy of its opponent, the process can still be defined as warfare, but no longer as a negotiation process.

If the opposing parties are bullied into an outcome that is unacceptable to them, the negotiation framework will break down. Negotiation is, after all, a process in which both parties come to an agreement in a more or less voluntary way. Negotiation is a bi- or multilateral, more or less balanced, and fair process, while war can be unilateral. One of the parties can just be forced to cede, while the common understanding of negotiation is to give something in order to get something. In cases of high priority of interest and low structural power – that is, not enough power resources – negotiators and military officers will have to build up strength during the process itself. Negotiators, as well as soldiers, can do this by having more and stronger allies than the other party, better organization and more efficient leadership than the other side, employing more effective strategies and tactics, having more skilled negotiators or fighters, and collecting more and better information, in short by changing the situation in such a way that it will be ready for their victory. Both negotiation and warfare are highly situational.

Collaboration stands for value-added behaviour. In this strategy, parties will cooperate if they perceive this to be a lesser evil than confrontation. Through collaboration, negotiators and soldiers create a more favourable situation than in a non-cooperative mode. For negotiators, collaboration means integrative negotiation processes: diagnosing a problem as a common problem and not just as a cake that should be divided. The outcome might be a win–win situation: all of the parties involved will get more out of the

process than they put into it. In other words, collaboration is possible, even if the parties are opponents, as long as they perceive the object of bargaining as a matter of common concern. They should be willing to go for an optimal outcome, not simply maximizing their profits in the short term, but expecting benefits from long-term cooperation. In view of future developments, they should be prepared to sacrifice part of their profits now, in order to create sustained positive margins in the future.

If countries are equally powerful, war will be difficult, the outcome will be uncertain and the costs will be high. Both sides will have to understand that a fight is not yet in their interest. The consequence of this collaboration is a status quo, a situation of peaceful coexistence, but not a solution for the problem. However, a status quo can create the circumstances under which negotiations can be used to move in the direction of a solution. This will only happen, however, if the status quo is seen as inferior to a possible solution, or, as discussed in Chapter I, if the parties involved perceive their 'relationship' as being a 'mutual hurting stalemate' (MHS) while they also have a vision of a 'mutual enticing opportunity' (MEO) to change their circumstances (Zartman, 2005: 1–3). Yet collaboration between allies is, of course, a military option, and enemies can turn into allies and vice versa. The ally of today might be the enemy of tomorrow.

Compromise is a half-way solution, accepted by both parties, while they might do better by going for collaboration. In a way, the parties are half-hearted: they want to avoid both the risks of confrontation and collaboration. There is trust, but not enough to take the risk of being exposed. However, in many cases of negotiation, the pie can only be divided and not be enlarged. Effective negotiators will normally try to move from 'distributive bargaining' (win–lose) to 'integrative bargaining' (win–win), whereby we should be aware of the fact that even in a win–win outcome, one side might win much more than the other. Circumstances (time, for example) will not always allow for this, and a division of profits in a linear way might be the only solution (Saner, 2005).

In warfare, a compromise will normally be an unplanned outcome of a battle, a stalemate in which both sides are unable to be victorious. There are some exceptions, however, to this outcome. For example, army leaders during the European Renaissance sometimes decided to call it a day after a symbolic fight, as they preferred this compromise over the risk of losing to many of their expensive mercenaries. In ancient times and during the Middle Ages, battles were sometimes decided through a compromise, with each side nominating a strong and brave fighter and agreeing to accept defeat if their champion lost. One problem of solving conflicts through comprise is its sustainability. Compromise is often an unsatisfactory solution for all the parties involved. It is of a backward-looking nature. To build a regime on the foundations of compromise is not an easy task, and time might quite easily undermine the settlement, after which it collapses.

Avoidance – or shying away from a risky situation – can be a useful strategy in both negotiation and warfare if one of the parties sees that it will be outmatched, while it perceives possibilities for stalling the confrontation until the context has changed in such a way that negotiation or battle might deliver a positive outcome. This can be taken literally: parties refuse to negotiate or to fight. Negotiators might feel that a fake process of bargaining will be more beneficial than a real one – for example, a process going in the direction of a solution, or an outcome. In the 1970s, the former USSR and the United States negotiated on arms reduction in Geneva over many years, not with the aim of really

reducing the level and quality of their armaments, but in order to be in contact with each other and perhaps to exchange information. Communication can thus be an important confidence-building measure and collecting information can be very useful for both sides. Stalling might also function as a means to wait for a more favourable situation. Finally, the USSR–US talks were a good excuse for neither disarming nor raising the level of armed forces, especially if the talks ultimately ended in failure. This might have been in the interest of some politicians on both sides, who were strengthening their internal positions, and perhaps also for the military men with an interest in not fighting, but in collecting as many arms as possible. Diplomats were, perhaps, less happy with this, and tough internal discussions therefore followed suit.

In Renaissance times, *condottieri* (leaders of the professional mercenary forces) often preferred manoeuvring over fighting, thereby keeping each other in the saddle instead of destroying one or both sides. They might have had a common interest in avoiding battle, much to the sorrow of their monarchs. But who was dependent on whom? It was often the prince who was dependent on his general. Often the soldiers themselves refused to fight, for all that they wanted was to be able to profit from their payments instead of dying on the battlefield, which was one of the reasons that induced Machiavelli to be critical about mercenary armies over conscript armies (Skinner, 1981).

The most obvious example of avoidance strategy, however, is guerrilla warfare. As the enemy is too strong to be confronted directly, avoidance will be combined with selected small-scale actions. Guerrilla forces will use the terrain where they have a situational power advantage over their structurally more powerful opponent. As the situation changes to the advantage of the weaker party, open warfare will again become an option, as we have seen in China in the late 1940s with Mao Zedong's guerrilla tactics against the Kuomintang, and during the Vietnam War by the Viet Cong. NATO's involvement in Kosovo in 1999 and its out-of-area wars at the beginning of the twenty-first century are tragic examples of the effectiveness of avoidance strategies by the weaker party, and the failure of the 'dominant' power to be successful in its competitive strategy. The paradox in Afghanistan (but in a way in Iraq as well) is that the United States and its Northern coalition, in crushing the Taliban (and Iraqi) regular forces, created a situation ripe for guerrilla warfare. The conventional means that are needed to be successful in a head-on clash are not apt for winning an indirect confrontation.

Accommodation, or appeasement, is the policy of not putting the relationship with the other side at risk. It is a strategy to be used if the relationship with the opponent is more important than the actual outcome of the negotiation or the battle. The Munich Agreement of 1938 is again the stereotypical example of negotiations in which one side decides to have the opponent gaining much more than one's own party – or even everything. However, accommodation is quite a normal process in the European Union, although in this case it is not a question of giving in to an overwhelming power, but to the necessity of solving collective problems. The strategy hinges on the question of priorities, as different countries have different priorities. While the political and security situation in the Mediterranean is of great concern to the Union's southern countries, the northern member states might have their worries about the Baltic Sea, or the western countries about the Atlantic, while the new members in Central Europe have a special concern about the Union's relationship with the Russian Federation and – for other reasons – with

Ukraine and Belarus. Negotiations on an issue are not of equal importance to all parties, which might therefore decide to accommodate the parties that have a vested interest in a crisis where they do not see major stakes for themselves. Of course, they equally expect other countries to appease them in cases when a dossier deals with issues of vital importance to their country.

The Hexagame that will be analyzed in Chapter XI shows that the Organization for the Prohibition of Chemical Weapons (OPCW) can only maximize its profits if the member states go for optimal outcomes. In other words, the collective whole can only really be successful if non- or less-involved partners agree to accommodate. Yet the reverse could also be true. The most involved, but also most vulnerable, countries might accommodate opponents in order not to disrupt relationships. During the Cold War, for example, the Federal Republic of Germany showed more willingness to accommodate the Soviet Union than the United Kingdom and the United States. The Germans could be blackmailed after all, as many of their compatriots lived in the German Democratic Republic, and the Federal Republic of Germany itself would be among the first victims of Soviet troops attacking Western Europe. Meanwhile, Egypt, Jordan, Lebanon, Saudi Arabia and – perhaps despite a lot of rhetoric – Syria have to be more prudent with the state of Israel than the Islamic Republic of Iran. He who is close to the fire can burn his hands. Thus South Korea has to be more accommodating in dealing with North Korea than Japan, and Japan has to be more sophisticated in handling the issue than the United States. For armies, accommodation can be a strategy if one is outnumbered, as one might decide to give in without a fight, or after a symbolic battle.

Alternatively, armies might even join the enemy. Especially in the history of the nomadic people, we see an ease in joining the stronger party and even adopting its identity. In Central Asia, many Turkic tribes adopted the enemy's name as if they had always been allied with them. Yet the reverse has happened as well. The Turkic tribe of the Bulgars gave its name to (Danube) Bulgaria, and the Thracian and Slavic tribes in the region became known as Bulgarians as well, but the original Bulgars lost their identity and accommodated the language of the people they once conquered. Equally, the Serbs and Croats – originally Alans and thereby Iranian nomadic tribes – became Slavonic as they moved deeper into Central and later into Southern Europe (Ascherson, 1995: 242); and the Franks adopted the language of the Romanized Celts whom they conquered. On the other hand, however, most of the people from Asia Minor accommodated the language of their Turkish overlords. It can go either way.

Divergences

The processes of negotiation and warfare share many characteristics and ways to handle risky matters. Their objective is often identical, but the tools that they use are very different. It is time to turn to the differences between negotiation and violence in order to be able to conclude about the questions: how are they connected and to what extent can we see them as being identical or at least complementary? Differences between warfare and negotiation already came to the fore in the paragraphs on commonality, in which common characteristics were stressed, as expressed in the use of strategies for example. Yet there are also differences, and the final question will be to decide whether these disparities

should be seen as being more important to our understanding of the two phenomena than the elements that they share.

There are differences in the behaviour of actors, the character of their needs, the implementation of available tools and the consequences of the outcomes. Concerning the behaviour of actors, the obvious differences between soldiers and diplomats come to the fore (Sjöstedt, 2003). While discipline and flexibility are important for professionals from both strata, it is clear that discipline is of more importance for military people than diplomatic staff, and flexibility for diplomats. Their tools are, of course, completely different. For military officers, technology dominates the scene. Without knowledge of – and insight in – advanced weapons technology, the armed forces cannot be effective. This goes along with the soldier's dependence on material tools for defensive and offensive purposes. The inter-state negotiator will also lean on high-tech tools, but his or her main modes are the spoken and written language, networking, analysis of behaviour or other negotiators, cultural and character understanding, skilful use of procedures and processes, in-depth knowledge and understanding of the balance of interest, and – more than with soldiers – political empathy. For the negotiator, immaterial needs are of more importance, while for soldiers material support is vital. This is, of course, a bold statement, as morale is vital for warriors while diplomats in multilateral conferences cannot do without language equipment. Still, warriors are more vulnerable without technological means, and diplomats are more helpless if the political and bureaucratic climate is working against them. The military seems to be more dependent on hardware, while diplomacy is by nature more a matter of software – software of the human mind. Negotiation is human interaction and bridge-building, while warfare is human struggle and bridge-blowing.

As military men and women need more hardware than civil men and woman who have to solve problems in a non-violent way, the costs of military action are clearly far higher than those of diplomacy. As civil society will have to pay for the costs of military action, the burden on mankind is much more substantial than the expenses to be made for diplomatic action. However, this does not mean that it is easier to get money for peaceful means, including war prevention and peace-building, than for military devices. The process of collecting money for the build-up of strong forces is much smoother than that of collecting money for conflict prevention and peace-building.

A lost military battle is a more serious issue than a lost diplomatic battle. The threat to survival is more serious with a lost military battle, and therefore the willingness to invest more heavily. We can even see this in the fight against terrorism. Terrorist activities are, of course, a major threat to nation-states, but in comparison to large-scale conventional and nuclear threats, terrorism is still perceived as less damaging to the survival of state structures, so less money is therefore allotted to those units fighting terrorism. This also has to do with the fact that conventional and nuclear means are more costly than the weapons needed to fight insurgents, but the fact remains that less energy seems to be needed to collect money for regular arms build-up than for means to ward off terror. This might change over time, but we cannot expect an easy race for diplomacy here. One should add that this issue is linked to overall power: if you have a hammer, you are inclined to see your problem as a nail; if you have a carrot, you will define your problem as a rabbit. Your tool defines your action.

Military action and diplomatic overtures are dramatically different in their consequences. It is obvious that a successful military campaign assures more control over the other party in the short run, while a positive negotiation outcome does not assure too much as far as the probability of implementation is concerned. But how should we diagnose the mid- and long-term consequences? They are different as well, but are perhaps more to the advantage of diplomacy than to the military. A lost war creates huge risks of enormous collective remembrance, but this is much less so if a negotiation's outcome is more favourable to the opponent than to one's own country. The first is more traumatic than the other and will therefore throw a shadow over future relationships. One might postulate that an outcome by military means assures short-term security but long-term insecurity, while in diplomacy a victory through negotiation will not result in much short-term stability, but will probably assure a more stable relationship over the years to come. A crisis can be handled effectively and immediately through the use of force, but the risk of a renewed crisis emerging on the same issue is enormous.

Diplomatic means are often insufficient in handling serious crises, but it is possible that the crisis will no longer arise after agreement has been reached, or the risk of flaring up will be less (Bercovitch, 2011). This might be true for present times, when technological tools create much more destruction – and often a more equal power balance on the ground – than in the past. As war was less destructive in the past – in general at least – and nations and societies were less rooted in their own identity, problems could be solved by war without having the boomerang effects that we see today. There are many unresolved conflicts from the past lingering on today, but not – with some notable exceptions – in a violent way. In sum, the decision to use military or diplomatic means has grave future consequences, but the choice to use either one will shape the future in completely different ways. Military and diplomatic tools can, of course, also be used in concurrence and in one way or another they are often not to be separated, like Siamese twins with different characters and therefore different consequences.

Synergies

Negotiation and the use of force often in practice go together, run parallel, or interchange. Wars might start after diplomatic negotiations have failed, or diplomacy steps in after one military force has been more successful than the other – or has failed to achieve its goals and therefore negotiations have to break the stalemate. It is clear that in negotiations after the defeat of one of the parties, the victor will most of the time follow a dominant negotiation strategy, while the other side has to accommodate. In that sense, we can ask the question of to what extent these negotiations can really be labelled as such. If a negotiation process is a voluntary exchange between more or less autonomous parties, how can we use the label of 'bargaining' for a situation with an extreme asymmetrical balance of power? Perhaps this should instead be seen as a dictate, as the Germans – or at least Adolf Hitler – perceived the Versailles conference to be after Germany's First World War defeat.

These kinds of negotiation will not easily lead to a truly peaceful situation. They anyway require extra measures to be taken. The victor should avoid taking measures that are too draconic and should as well create conditions that will foster peaceful development in

the foreseeable future. The mistakes of the post-First World War negotiations were not repeated after the Second, which was concluded with a conciliatory peace settlement, be it almost 50 years after the end of the war, in 1990 with the Treaty on the Final Settlement with Respect to Germany. Justice must be done, but this is easier said than done. The crooks are not ready to conclude peace if they know that justice will be done at their expense. Still, for reconciliation purposes (Anstey, 2011: 24–29; Anstey and Rosoux, 2011: 31–33), 'some' justice should indeed be done, but the victims of this are often those who played a relatively minor role in any atrocities. The leaders, those who held final responsibility for the conflict, find – and are often offered – their way to safe havens before it is too late. Peace and justice alone are not sufficient, however, and should be followed with long-term cooperation. A common project for the future (as with the Arab League, or European Union) will take the problems to another level, thereby solving – or at least diluting – them. Negotiations rolling out of an undecided war have a much more balanced character than those where victors and victims are sitting around the table, although the skilful way in which Talleyrand operated on the behalf of the defeated France during the Vienna Conference of 1814–1815 clearly showed that circumstances can sometimes be changed by skilled and effective negotiators.

Besides negotiations being used in pre- and post-war situations, there are processes of conflict management in which negotiation and warfare are used as parallel tools, where they go hand-in-hand. There will not always, of course, be equilibrium. During this process, war or negotiation might be dominant according to the developments at hand, changing parties' positions and strengths, and shifts in interests and emotions. Emotions will play a decisive part in this. Atrocities can lead to an abrupt end of hostilities and the upgrading of negotiations as parallel to the war theatre. It is often supposed that outbreaks of war will put a hold on negotiation processes, but this is doubtful. Parties always have need for communication, be it over temporary cease-fires like on the Western Front during the First World War, exchange of prisoners, or attempts to put an end to the fighting when both sides suffer serious losses. Havoc can inspire new talks. These negotiations will not be visible, but will go through 'back channels'. Back-channel negotiations can be extremely helpful in restraining the warring parties, and in devising formulas for the future. Just as negotiations can be pushed forward by the threat or use of force, they can also be disrupted by this. The risk exists, however, that spoilers might discover the back-channel talks and publicize them, thereby derailing the process (Wannis-St John, 2006).

There are many examples of 'coercive diplomacy' pushing the negotiation process in a positive direction, although the question can again be asked of to what extent these talks can still be seen as genuine bargaining. We have many examples of fruitful negotiation processes being destroyed by violent acts, which are often aimed at the destruction of the peaceful attempts to end the crisis. For example, implementation of the Oslo peace process in the first half of the 1990s has been eradicated by the violence of extremists who did not want the moderates to be successful. As a case in point, Israeli Prime Minister Yitzak Rabin was killed by one of his own countrymen. The downward spiral initiated by this destructive behaviour could hardly be bent in a positive direction, and indeed this has not yet been the case. The problem is that violated trust is even more difficult to handle than lack of trust, which is a problem that we often face within the negotiation process,

where violation of trust creates an atmosphere of more severe distrust than before the start of negotiations, as people's positive emotions relapse into negative ones.

In the case of the Oslo peace process, one of the main problems was the inability of the parties to sell the outcome to their populations. The political leaders took the risk of signing an agreement, while they could not be sure of its implementation. One notices the same development in South Caucasus since the successful negotiations between the governments of Azerbaijan and Armenia on the Nagorno-Karabakh issue in the first half of the 1990s. (Then) Defence Minister Vazgen Sargysyan took the risk of settling the issues with Azerbaijan, but was later shot and killed when prime minister in the Armenian Parliament in 1999, while Armenia's first President Levon Ter-Petrosyan had to resign in 1998 in favour of one of the staunch opponents against the deal: the 'President' of Nagorno-Karabakh, Robert Kocharyan, who then became the president of Armenia, ending the peace process, and the Minsk group is still unsuccessful in its attempts to repair the 'crisis'. Is this a crisis, or is it non-peaceful coexistence? The term 'smouldering crisis' seems to be appropriate here. The negotiations continue without any visible process, while the Azerbaijanis can one day use their oil revenues to reopen the war that 'ended' over twelve years ago, incidents left aside. However, it is to be hoped that Azerbaijan will refrain from doing so, as it has been quite clear since the Georgian–Russian war that Russia will side with its Armenian ally.

It should be added here that – although public support is vital for successful negotiation – it is even more important in cases of warfare (Wijk, 2005: 257). A war that lacks public support will be shipwrecked sooner than a bargaining process.

In sum, the interaction between negotiation and warfare as parallel tools in conflict management is an uneasy one. Depending on the circumstances, the mix can be successful or disastrous. No prescription can be given, apart from a tentative one. An approach through negotiations 'supported' by the threat of viable – and if possible legitimate – warfare seems to be a more or less balanced pairing between the phenomena of negotiation and warfare. Abiding by international law and the legitimate use of force – for example, sanctioned by a UN Security Council mandate – is of utmost importance in avoiding a never-ending collective remembrance by the losing party, and negotiations will also have to play their part in preparing for 'just' warfare. This combination of negotiating and trying to work within international law is not always successful, as we saw in the run-up to the War in Iraq in 2003. It depends on the actors and their interests. The dilemma is that by voting against the resolution, opponents to the war could not prevent the Iraq War from breaking out, while at the same time they blocked the option of a war waged in a legitimate way.

Between warfare and negotiation we have coercive diplomacy (George, 1991). Coercive diplomacy can be seen as a tool to be used if negotiations do not work, while it is still too early to apply warfare. Coercive diplomacy can be regarded as a tool between negotiation and warfare, for it tries to prevent the risk of stand-alone negotiations and stand-alone warfare. How effective is it to threaten the other side, supposing that the victim will perceive the threats as credible? Looking at warfare, one might postulate that a threat can be a useful means in getting the enemy to surrender without a fight, as happened in the case of Denmark's surrender to Germany in the Second World War. Terror has exactly that significance: threatening the opponent, in this case by using limited but

focused force, without unleashing a full-scale war. However, by threatening the other side, surprise is gone. This could become a major obstacle to success, as the opponent can also now prepare for war.

Mediation

If negotiation does not help in managing a conflict and war looms around the corner, mediation might be the tool to prevent warfare and save the negotiation process as an instrument. With *Herding Cats*, Crocker, Hampson and Aall edited a book on mediation that acted as a milestone in mediation research (Crocker *et al.,* 2001). It gave rise to much more work, for example in the Journal of *International Negotiation*. From thereon, Jacob Bercovitch's contributions helped to further the understanding of international mediation as an instrument in international negotiation. Bercovitch's book *Theory and Practice of International Mediation* is his legacy to academics and practitioners in the field, and a very valuable one (Bercovitch, 2011). This book will now discuss Bercovitch's views on mediation in connection with Kyle Beardsley's book *The Mediation Dilemma*, which is a valuable extension of, and critique on, Bercovitch's writings (Beardsley, 2011). According to Beardsley, mediation is often counterproductive in the longer run. Mediation might be useful in managing a conflict in the first few years, but after about four-and-a-half years, the mediation effort loses its impact and the conflict will resurface. Beardsley argues that mediation has often put the lid on the can without solving the underlying issues. As a consequence, the recurrent conflict might be even more violent.

How to study and do research on mediation is the opening chapter of Bercovitch's book. He gives us a definition by enumerating nine characteristics of the phenomenon, describing it as an extension and continuation of peaceful conflict management. He then introduces the elements of mediation to us: the parties in conflict; the issues and their nature; identity and characteristics of the mediator – the context of it all. In doing this, he arrives at a contingency framework where context, process and outcome are linked.

In the first part of the book, Bercovitch connects context and mediation. To him, mediation is an appropriate method for dealing with international conflict, when a conflict is long, complex, or intractable, when the parties themselves proved unable to break the impasse and there is a 'mutual hurting stalemate', as well as a 'mutual enticing opportunity' for cooperation to end the cycle of conflict. In other words, Bercovitch defines mediation as a decisive factor in negotiation processes that cannot be managed by the contending parties. He then poses four questions for research: why do parties and the mediator decide to enter into mediation, who may mediate, how do the mediators behave, and what are the conditions for success? On the last issue, he does not really draw substantial conclusions. This is obviously outside his reach, which is problematic, as both practitioners and researchers will look for these conditions in order to judge whether a mediation process will be effective or worthwhile to study.

The second part of the book deals with two case studies in the context of Israeli–Palestinian peacemaking: Camp David; and Oslo. Bercovitch puts them in an interesting sequential framework and distinguishes 'antecedent', 'concurrent' and 'consequent' phases. Within that flow, he shows us the interrelationship of goals, personal factors, role factors, interactional factors, situational factors, and the outcome of the process. He then

gives the reader a prescription for the actions that the mediator should take in order to be successful. He enlightens us on at least one condition for an effective mediation process: how the third party should behave. He adds a prerequisite: 'international mediation is a form of conflict intervention that requires the prior acceptance and cooperation of the parties' (Bercovitch, 2011: 129).

The third part of the book deals with quantitative studies in mediation, starting with the question of choice between mediation and negotiation. On two different occasions, Bercovitch shows that mediation is an important means in conflict management. According to the data used, mediation comes first in something like 60 per cent of the cases of peaceful conflict resolution, in 309 conflicts between 1945 and 1995. Negotiation comes only second, in almost 40 per cent of the instances of peaceful conflict management. Although based on the same dataset, the percentages differ slightly in the tables presented to us. It is in this part that Bercovitch discusses three strategies for mediation, concluding that mediation is a diverse and complex process of social interaction, a conclusion already drawn by the reader before he or she started reading the book, presumably.

'Current Issues in Mediation Research' is the title of Part IV. Four mediation issues are dealt with: 1) internationalized ethnic conflict; 2) culture in mediation; 3) intractable international conflicts; and 4) the contribution of international mediation to the prevention of deadly conflict. On the first issue, Bercovitch proves the usefulness of mediation in dealing with ethnic conflict. On the second, he concludes that culture has a major impact on mediated negotiation processes. This is why he stresses the necessity of selecting culturally sensitive mediators. On issue three, he presents his finding that mediation has little impact in intractable conflict situations, but he does not offer a solution for the problem. On the final issue, Bercovitch recommends institutionalization of mediation, in the sense that the international community should create a mediation system like the system of international negotiation, a system that is ready to respond quickly whenever mediation is needed to prevent (more) casualties.

Kyle Beardsley's *The Mediation Dilemma* is more consistent than Bercovitch's 'reader', but at the same time it lacks its richness and helicopter view. To Beardsley, '[m]ediation is the inclusion in a peace process of a third party with mutual consent of the parties involved without binding authority or the use of violent coercion' (Beardsley, 2011: 43). The author thereby limits himself to mediation in violent conflict situations, excluding mediation in more peaceful processes such as the European Union and United Nations, etc. His main conclusion is that by solving short-term problems through mediation, long-term stability might not be accomplished. In other words, mediation will often allow conflicts to linger on, and might therefore be questioned as a tool in managing internal and external conflicts. This is quite the contrary of Bercovitch's approach.

Beardsley presents five chapters on the questions of: 'Negotiating Mediation'; the issue of accepting mediation as a tool in conflict resolution; the 'Short-Term Benefits of Mediation'; the 'Struggle for Self-Enforcing Peace'; as well as 'Mediation in Intra-state Conflicts'. The final chapter is on 'Implications, Applications and Conclusions'. Beardsley's 'Policy-Relevant Recommendations' are:

> First, mediation should be used sparingly when there are major vulnerabilities to failed implementation, […] Second, third parties should be aware of issues related

> to legitimacy, […] Third, outside actors should intervene more carefully when the disputants could benefit from using mediation for ends other than peace, […] Fourth, potential third parties should hesitate to become involved in a peace process when coordination and implementation is likely to prove difficult […] Fifth, the use of leverage itself is not actually a source of long-term instability; it is the attenuation over time of that leverage that increases the propensity for re-negotiation (Beardsley, 2011: 183–187).

Beardsley's study has been based on an analysis of international crises since 1918. He finds that nearly half of those conflicts ended with some sort of agreement, but that 52 per cent of them recurred, while 50 per cent of the crises that did not end with an agreement also recurred. In the first ten years of the new millennium, 34 per cent of the mediated conflicts relapsed, against 21 per cent of the unmediated ones. Mediation, then, creates less stable peace. He notes the catch-22 that under the UN system, countries have an obligation to defend human security, which then might lead to more problems instead of fewer. He continues by testing his hypotheses on several inter-state cases: Jimmy Carter in the Middle East when they mediated the Camp David Accords in 1978; Carter in North Korea in the 1990s mediating the Agreed Framework; and Teddy Roosevelt at Portsmouth, mediating the end of the Russo–Japanese war of 1904–1905. He then tests the hypotheses on intra-state cases: Rwanda; Haiti; Sri Lanka; and Aceh; as well as 'Oslo' as a hybrid between intra-state and inter-state. 'Beardsly's research shows to us that in addition to considering dynamic properties in the supply side and demand side factors that produce mediation, we must also consider the dynamic properties of the conflicts they are designed to resolve' (Mitchell, 2014: 199).

While Bercovitch values mediation highly as one of the few tools – with shortcomings for sure – to deal with conflicts in a peaceful manner, Beardsley modifies this statement by proving that mediation is useful in the short run, but often contra-productive in the long term. Beardsley concludes with five recommendations for policy-makers: (1) use it sparingly; (2) be aware of issues related to legitimacy; and (3) of disputants using the mediation efforts to prolong the conflict; (4) coordinated implementation must be feasible; and (5) attenuation of leverage over time might increase the propensity for renegotiation.

In conclusion, the two books help us to get to grips with the positive and negative consequences of mediated negotiations. While mediation is often an international obligation, it does not always help to solve the problems at hand; it might even be counter-productive. As the Buddhists say, not acting is sometimes more effective than taking action. This seems to be valuable advice to the political systems of our world, foremost to the most powerful on Earth.

On multi-party mediation, Sinisa Vukovic's doctoral dissertation *Analysis of Multiparty Mediation Processes* discusses cooperation and coordination, exogenous geopolitical shifts, changes in conflict dynamics, the way to negotiate for cooperation, the strategic interests involved and their legitimacy, and achievement of coordination (Vukovic, 2013). He launches a game-theoretical model (Vukovic, 2013: 57), which is essentially a prisoner's dilemma. Vukovic's study concurs (Vukovic, 2013: 10) with William Zartman's hypothesis that 'if a number of conciliators are available to the parties themselves and if a number of friends of the conflicting parties can coordinate their good office and pressure,

the chances of success are improved' (Zartman, 1989: 276). This does not mean, however, that we know to what extent multi-party mediation will soften the Kyle Beardsley's conclusions of mediation as a tool in actually solving conflicts, instead of postponing a renewed outbreak.

In Conclusion

As analyzed in this chapter, negotiation and warfare are intimately linked. They are meant to diminish the chance of unnecessarily yielding to the other side, they share a common goal and use the same strategies, but their tools are completely different. Words and regimes are negotiation's methods; violence and technology are warfare's instruments. Diplomacy is based on software; military is dependent on hardware. Their actors will therefore have to be of a different character. Creativity is important for diplomatic negotiators; discipline is vital for military officers. This does not mean that diplomats do not need hardware and discipline at all, or that military men or women can do without software and creativity. All of these skills will have to be applied, but the emphasis is different. Negotiation and warfare are closely connected, run parallel, or interchange constantly. Negotiation can often fail without the threat of war, and wars cannot be concluded without follow-up negotiations.

On the basis of common aims, common strategies and close connectedness, we could reach the conclusion that negotiation is indeed warfare by other means and vice versa. The question is about in which conflict phase we are. In practically all circumstances, warfare will be followed by negotiation, and therefore this particular bargaining is bullying by other means. Negotiations will almost always preclude warfare, and in those cases war is wheeling and dealing by other means. Of course, both will often run in parallel: negotiations will take place during violent conflicts; while skirmishes often happen when serious peace talks are occurring. It is important to analyze the strategies used in warlike situations. According to James Ray, '"bullying" strategies led to war in almost two-thirds of the crises (researched in recent history) [...] while reciprocating strategies achieved either diplomatic victory or a compromise nearly two-thirds of the time' (Ray, 1998: 147).

Using threat and force might help to manage a problem in the short term, but bargaining is the best tool for long-term problem-solving. By using force, you risk violence being used against you, but by only using words, you might give the other party time to build up strength. Conflict management can be done by using force, but negotiation is the most effective tool for conflict resolution, if the risk against doing so is perceived as being minimal. In that sense, the utility of negotiation is greater than that of warfare: to solve an inter-state conflict through violence is virtually impossible; to do so through international negotiation is very probable.

Not all conflicts are ripe for negotiation, and therefore the less utile tool of warfare is often seen as the only alternative. Even then, however, diplomats should try to keep the dialogue going, to negotiate as a form of communication in order to keep the option of real give-and-take open. The sooner that enforcement can give way to mutual understanding, the more valuable the final solution will be. And if the argument against negotiation is that warfare is a more effective tool as it will create more assured outcomes than bargaining,

one might counter this by stating that war creates problems for the future because of the traumas involved. Add to that 'an undecided war creates a feeble peace' (Teitler, 2002: 59) and the conclusion that negotiation is more utile to politics than force comes to the forefront of one's mind.

One can brush aside the notion that peace established by outright enforced victory might be established in the short run, but will fail in the long run to create a sustainable non-violent situation. There are always exceptions to these value judgements. In some cases, war is unavoidable and must be waged, but never without giving ample opportunities to negotiation processes to perform their peaceful duties for mankind's peace. Negotiation can then be a tool in conflict management or conflict resolution. In conflict management the means of conflict can be demoted from violence to politics; in conflict resolution the issues between the parties will be resolved. Whether it will be management or resolution depends very much on the nature of the conflict and the phase during which negotiation enters into the conflict situation. In some cases, conflict management can be transformed into conflict resolution.

Can negotiation cope with conflicts in an efficient and effective way? Kalevi Holsti identifies eight major prerequisites for peace: the negotiations should effectively deal with problems of governance; legitimacy; assimilation; deterrence; conflict resolution; war; peaceful change; and issues concerning the future (Holsti, 1991). Did the famous peace treaties tackle these issues? Holsti analyzed five major international negotiations as turning points in recent European history: Westphalia (seventeenth century); Utrecht (eighteenth century); Vienna (nineteenth century); Versailles (twentieth century); and the proclamation of the United Nations in San Francisco (twentieth century). Westphalia only coped with half of the conditions for enduring peace; Utrecht with one-quarter; Vienna and San Francisco with a slight majority of the prerequisites; and Versailles with only a minority of them. Holsti therefore identified Utrecht and Versailles as ineffective peace negotiations, and Vienna and San Francisco as successful regime-building attempts.

In other words, while Utrecht and Versailles were backward-looking outcomes, Vienna and San Francisco were forward-looking conferences. Westphalia then takes a balanced position, producing a forward- and backward-looking mix (Meerts, 2005b). This list does not suggest a substantial evolution in diplomatic negotiation becoming a viable alternative to warfare as centuries pass. However, Holsti does not include the 1949 Treaty of Washington and the 1957 Treaty of Rome in his overview. These treaties, which gave birth to NATO and the EU (ultimately), created strong regimes that in turn secured more substantial outcomes than previous negotiations could assure. According to Schelling, eight characteristics of negotiation processes will stimulate substantive outcomes (Schelling, 1963: 28–35). First, the use of bargaining agents; then the reputation of the bargaining parties; precedents to which to refer; continuity of the process; simultaneous bargaining; options for compensation; the mechanics of the process; and its principles and commitments. All these factors are part and parcel of modern bargaining in the stronger regimes of our times. We therefore dare to conclude here that the negotiation process of the twenty-first century is gaining strength as an alternative to warfare, but this does not preclude warfare from happening.

War between countries seems to be diminishing. 'Violence has declined over long stretches of time, and today we may be living in the most peaceable era of our species'

existence' (Pinker, 2011: xxi). The Conflict Barometer 2012 of the Heidelberg Institute for International Conflict Research (Conflict Barometer, 2012: 2–3) observes that inter-state conflicts remained at the same level on average from 1945 until 2012. This was not the case for intra-state conflicts, which went up from around five to over 40 in 2010. Is the decline of inter-state violence the consequence of negotiation? We cannot be sure about this, but there might be some indication that this is indeed the case. 'In the new millennium, the number of conflicts ending in victory has declined, while the number ending in negotiated settlements has increased' (Mack *et al.*, 2007: 35). For example, while sixteen wars came to closure in the 1950s through the victory of one of the sides, only nine were dealt with through negotiation. Meanwhile, in the 1960s the balance was 23 to eleven; in the 1970s, 22 to thirteen; and in the 1980s, twenty versus eight. Then, in the 1990s, the balance switched in favour of negotiation: 23 to 41; while in the first five years of the new millennium, it was five to seventeen. In total, from 1950–2005 there were 104 conflicts settled through victories and 82 through negotiation (Mack *et al.*, 2007: 35). While more wars are ending through negotiation, the number of multilateral negotiations has been exploding: 'In the middle of the nineteenth century there were about three international conferences annually; today more than three thousand (Holsti, 2004: 191).

Nevertheless, one has to be cautious about linking the diminishing frequency of conflict to the frequency of international conferences. Jan Geert Siccama states that 'If wars are time-dependent, and earlier wars can be considered a cause of later wars, previous peace conferences may also determine the outbreak of subsequent wars (and the success of later peace settlements)' (Siccama, 1993: 125). The Paris Peace Conference of 1919 seems to be an example of such causality.

PART TWO

The Conduct of Diplomatic Negotiation: Case Studies and Approaches

CHAPTER VI

The Seventeenth Century: Forward- and Backward-Looking Outcomes

This chapter is based on Meerts (2005b).

CHAPTER VI: THE SEVENTEENTH CENTURY: FORWARD- AND BACKWARD-LOOKING OUTCOMES

The 1648 Peace of Westphalia represents one of the most outstanding examples of forward-looking outcomes in human history (De Wilde, 2000: 29 and 43). Moreover, the regime created at the negotiations in Münster and Osnabrück – a regime that marked the end of the *Respublica Christiana* and the beginning of the system of sovereign, independent states (Schrijver, 1998: 144) – is still alive and well today. By legitimizing the *de facto* status quo, Westphalia established a new political and legal system in Europe and sowed the seeds of further changes in European societies:

> The essence of the old system of governance was that all peoples were held together in a universal society by a non-exclusive form of territoriality, in which political authority was both personalized and divided within and across territorial formations and for which inclusive bases of legitimization prevailed. The sharp division between citizens and non-citizens, being an important feature in the modern state, was not there (Van Staden and Vollaard, 2002: 179).

Some see Westphalia as the beginning of international state law: 'It was then that international law emerged as a law of "states" that could be thought of as "legal subjects" or "persons" distinct from their rulers of elite groups' (Koskenniemi, 2011: 5).

There have always been attacks on the regime of formal equality between sovereign states that was created at Münster and Osnabrück, and the regime will probably be further undermined in the decades to come. Nevertheless, after 350 years, the system of states, as created in the mid-seventeenth century, is still the most effective way of avoiding chaos and structuring the world community. This chapter will deal with how the negotiations came about, what kind of negotiation processes (forward- or backward-looking) took place, how matters of peace and justice were handled, what regimes were installed, and what their prospects might be in the twenty-first century.

In the middle of the seventeenth century, wracked by wars between and within the old hegemonic powers of the Holy Roman Empire and Spain, and the ascendant states, such as France, Britain, Sweden and the Netherlands, Europe was looking for a lasting peace agreement. The wars, a mixture of internal and external warfare under a cloak of religious differences, were devastating. Civil wars raged, sparked by emotional religious outbursts, and these cruel conflicts were used as a pretext for external interference in the internal affairs of states. The Swedes, for example, used the threat of Catholic action against the Protestant fiefdoms in Germany as an excuse to intervene in the affairs of the

Holy Roman Empire, which had been invited in by the Protestant overlords to rescue them from Catholic oppression. Moreover, many such rulers had converted to Lutheranism or, in the Netherlands, to Calvinism to mobilize the people against their feudal masters. This resistance to emperor or king was, in fact, a reaction against the attempts of the highest rulers to modernize their states. The states were in reality composite territories, rooted in the medieval feudal system that had withered away at the end of the fifteenth century (Groenveld, 2000: 52). They could no longer deal with modern-day demands, and attempts to move in the direction of a unitary state brought about their demise.

Yet even as the people transformed into Renaissance men and women, as societies became more open, as the merchant class, step by step, marginalized the noble families, and as cities grew into pre-eminence, the feudal system still clung on in its increasingly outmoded and irrelevant forms. In other words, the political system was now inappropriate both in terms of the underlying values and norms of society and of its economic structures and processes. Confronted with this problem, the emperor of Germany and the king of Spain started to modernize their states by introducing a relatively strong bureaucracy whose success depended on greater state centralization. The attempts by these sovereigns to remove the root cause of the internal weakness of the state – namely the extreme decentralization of their domain – provoked resistance and revolution. Thus, paradoxically, the efforts to assure an effective implementation of sovereignty led to a breakup of the old powers. This gave birth to the peace negotiations in Westphalia, which, in turn, can be seen as the cradle of today's notion of sovereignty. It should be added, however, that the tendency to centralize the state was not always a rational process. In Spain, it also had to do with the character of King Philip II, who was not only incapable of delegating, but also a master of procrastinating micro-management and a workaholic who read all documents and signed all decrees himself with '*Yo, el Rey*', or 'I, the King' (Vroom, 2000: 45 and 49).

The Peace of Westphalia had many faces. It was a necessary instrument of transition from the old era to the new. As far as peace and justice are concerned, it stood for important elements both in backward- and forward-looking negotiations. For the old powers, the peace agreement acted as a safeguard against further decay. For the young powers, it was the place to obtain justice, to assume their rightful place in the community of states. In that sense, the agreement had more of a forward-looking character for the young states than for the old. In fact, Westphalia put an end to the division of the world between Spain and Portugal that had been made in the Treaty of Tordesillas and, at the same time, legitimized Hugo Grotius' idea of a *mare liberum*. It had a mixture of short-term, backward-looking aspects and long-term, forward-looking aspects: it put an end to internal and external wars and, by installing committees and guarantors to oversee peace, it created – formally at least – the equality of states and religions.

Let us try to define the major concepts that will be covered in this chapter. Although Westphalia created new regimes, it had some difficulty in doing so, as will be explained below. 'Building institutions in world politics is a frustrating and difficult business. Common interests are often hard to discover and to maintain. Furthermore, collective action invites myopic behavior' (Keohane, 1983: 246). Regimes were defined in chapter III of this book as:

> [...] implicit or explicit principles, norms, rules and decision-making procedures around which actors' expectations converge in a given area of international relations. Principles are beliefs of fact, causation, and rectitude. Norms are standards of behaviour defined in terms of rights and obligations. Rules are specific prescriptions or proscriptions for action. Decision-making procedures are prevailing practices for making and implementing collective choice (Krasner, 1983: p. 2).

Westphalia's forward-looking outcome is an example of a negotiated regime. 'These regimes are characterized by conscious efforts to agree on their major provisions, explicit consent on the part of individual participants, and formal expression of the results' (Young, 2003: 99).

The Westphalia negotiations created the regime of equal sovereign states, or 'black boxes', as the building blocks of Europe – and, in effect, of the world – as we know it today. The principle of justice meant respect for the territorial integrity and sovereignty of each state over its own territory to the exclusion of other actors. The norm was the *communis opinion* (common opinion, generally accepted view) regarding the way in which European countries should deal with each other. The rules were the agreements on the implementation of the principles and norms, translated in diplomatic codes, ways of conducting war, exchanging goods, and dealing with any matter concerning inter-state relationships. A decision-making procedure was established, in the sense that only heads of state could decide on inter-state matters through consensus. It should be noted here that – with the possible exception of the Chinese, Ottoman, Persian and Ethiopian empires – states outside Europe were not seen as equal to those in Europe. They could, and thus should, be conquered and colonized, and the principle of equality was applicable only to Christian countries. As time went on, more states were seen to come under the equality rule which, in our own century, applies to all states. The principles, norms, rules, and procedures are now largely codified, but it took 350 years for them to arrive at their present level of institutionalization, and we will not see their end for quite a few centuries to come.

Parties and Positions

The need to start peace talks came at a time when all of the parties were stuck in hurting stalemates. None of the parties could win a decisive victory, with the exception perhaps of the Dutch, who were easily able to strike a favourable deal with their Spanish opponents. These stand-offs were particularly hurting the civil population, as human rights were violated on a grand scale. In the Palatinate, the French engaged in such systematic slaughter that it might well qualify as the first modern-day genocide. Why, then, were the countries of Western Europe so much at odds with each other? In order to understand this, and its consequences for the negotiations in Münster, an overview of the developments in and around the Westphalia Treaty has to set the stage. There is quite a lot of literature on the Münster negotiations (Dickmann, 1959; Anderson, 1963; and Duchhardt, 1993), especially in the Netherlands (Groenveld, 2000; Meerts, 2000; Rietbergen, 2000; Tromp, 2000; and De Wilde, 2000), as it was a crucial negotiation, not only for Europe in general, but for the Netherlands as well. After all, it was in Münster that the European monarchs

allowed the Republic of the United Netherlands to be a sovereign state, although it had already been independent for half a century.

Although religious differences were seen as one of the engines of the Thirty Years' War, the Catholic French had no qualms about intervening on the side of the Protestant princes against their Catholic overlords. In that sense, rulers were often very pragmatic as far as religion was concerned; nor did they care about the fate of those who were close to them in terms of nationality or language. The Dutch had no compunction, for example, about blocking the River Scheldt and causing starvation to the Dutch-speaking Flemish population in Antwerp. Indeed, Amsterdam owed its wealth to the blockade and fall of Antwerp, which had once been the largest city in Europe and where Calvinism had a foothold long before it came to Amsterdam. In fact, Amsterdam remained Catholic and loyal to Spain for such a long time that the other Dutch cities made it the formal, but never *de facto*, capital of the Netherlands. To the present day, the Dutch head of state and the government reside in the city of The Hague which, in the seventeenth century, was a village and thus without city walls. Neither religion nor nationality, nor any other value-loaded reasons, were at the heart of these ongoing conflicts. They were really all about power politics, about who would have a dominant position, and what territory would be accepted as a legitimate state.

At the turn of the sixteenth and seventeenth centuries, the hurting stalemates were such that pre-negotiations, leading up to agreements to break the deadlocks, became unavoidable. The pre-negotiations between Spain and the Netherlands, starting in 1621 and becoming regular in character from 1626 onwards, were in themselves illustrative of the road to Westphalia. After 80 years of war, interrupted by a twelve-year truce, both parties were tired, but not everybody wanted peace. While some factions within both camps longed for peace, others saw it as most inappropriate. The principal adviser to Spanish King Philip IV, the Count-Duke of Olivares and San Lúcar, Don Gaspar de Guzmán, made the mistake of renewing hostilities against the Dutch after the Twelve Years' Truce, creating more disaster for Spain. When the count-duke was finally obliged to make good this error by suing for peace, he had to grant many concessions to bring the Dutch rebels to the negotiating table. One problem that arose was the question of where to meet the Dutch rebels and how to provide passports for them. After long negotiations, the Dutch accepted passports that mentioned the king of Spain as their protector rather than sovereign. This, in itself, was a major concession on the part of the Spaniards, and indicated that the Spanish king was willing to give up sovereignty over his Dutch provinces. A long discussion followed as to whether or not the king could describe himself as a protector in perpetuity (Poelhekke, 1948: 22).

On the Dutch side, Prince Frederik Hendrik of Orange, the lord governor or *stadtholder* of the United Provinces of the Netherlands, resisted the idea of a 'hasty peace', as his French allies – in return for their support – had asked the Netherlands not to conclude a separate peace agreement with Spain as this would weaken the French war effort. But while France needed the Dutch fleet in its war with Spain, French support for the uprising in Catalonia in 1640 had exacerbated relations with the Dutch. Prince Frederik Hendrik also needed the French, but not for his war effort; he needed the French as an ally within his own country. The Dutch fleet at that time was a mighty one that could plunder the Spanish colonies more or less at will; on the ground, however, Prince Frederik Hendrik

had destroyed the Spanish forces and made the northern part of the southern province of Brabant an effective land barrier. The merchants were in power in the major cities of the Netherlands and in the seven sovereign provinces, but Prince Frederik Hendrik's duty as governor was to maintain the unity of the country. He had no sovereign powers but was an appointee of the states-general, the representative body of the provinces. As he tried to become more independent of them, he was also in competition with the *Raadspensionaris*, the prime minister of the hegemonic province of Holland. Frederik Hendrik thus needed an ally in a struggle within his own country, and the French were available.

As France still had to consolidate its position as a result of new territorial acquisitions made from the house of Habsburg, especially in Germany, the war was prolonged. In the Netherlands, however, most of the provinces wanted peace. Although the war was profitable for provinces that earned a living by keeping Antwerp closed or by pirating Spanish and Portuguese possessions (notably the province of Zeeland), other provinces, especially Holland, which was paying more than 50 per cent of the war budget, wanted peace, because the war and the damage it was causing to merchant vessels were too costly. The necessity of maintaining land forces was a particular thorn in the side of the merchant families, partly because of the cost, and partly also because the army was the power base of the governor, so the merchants were consequently subsidizing the powerful arm of their political rival. Frederik Hendrik had inherited the army from his brother, Prince Maurits, who had modernized it to create one of the most effective forces in Europe. As the merchants were interested only in overseas trade, they even contemplated giving up the inland provinces to save money on the army, an extraordinary situation as there was no political or military need to do away with these territories. The House of Orange also resented these ideas, because it had hopes of playing a role in Germany again, where it had its Nassau possessions. It feared anyway that a peace treaty would mean a permanent separation between the Northern and the Southern Netherlands (De Schepper *et al.*, 1997: 5). Yet the House of Orange could not avoid peace negotiations forever and, slowly but surely, it was forced into contacts with Spain. It agreed to peace negotiations on the condition that the French would negotiate with Spain at the same time.

The French, for their part, had overcome their internal religious feuds. By the Edict of Nantes in 1598, the French Protestants (the Huguenots) were given equal rights with the Catholics, thus restoring internal unity to France, which would last over 100 years and provide the French King Henry IV with a basis for a more effective foreign policy. Henry used this opportunity to intervene in Habsburg affairs in Spain (by supporting the rebels in Catalonia), in the Spanish Netherlands (modern-day Belgium), and in Germany (mainly the Rhineland and Bavaria). French offensives came to a halt in the first half of the seventeenth century with the advent of the Thirty Years' War. Notwithstanding French alliances with the Protestants in Germany, Sweden and the Netherlands, their successes threatened to fade away, as Spain and Germany proved to be tough opponents. The French needed a peace agreement to divide their opponents. They were also in danger of losing their Dutch ally, as the Eighty Years' War with Spain was now drawing to a close. France had obviously not yet had its fill of warfare, but needed to buy time for more expansionist wars. That is why, for France, the Peace of Westphalia was a short-lived peace.

Westphalia was a forward-looking outcome in the sense that it gave birth to the new notion of sovereignty and did away with the old hierarchy of states that was headed by the Pope and the German emperor and its retinue of various monarchies and republics. It created self-ruling entities within Germany, thereby removing Germany as a central power from the European balance-of-power system for more than 200 years. France's intention of expanding its territory to the River Rhine, and into Italy and 'Belgium', was revealed after Westphalia in a succession of negotiations on warfare and peace that lasted more than 50 years to the beginning of the eighteenth century, for negotiation now served as a tool in warfare, instead of warfare as a tool in negotiation. In terms of ending all wars between all negotiating partners, however, Westphalia was not very forward-looking for the French–Spanish and French–German relationships, but a mere breathing space in a series of struggles for hegemonic power by Spain, France and Germany, as each party sought justice in its own quest for dominance.

The Spanish urgently needed peace, as their position of hegemony was declining under internal and external pressure. They were ripe for negotiation. Internally, they had to cope with the rebellions in the Netherlands, Catalonia and Portugal. The northern part of the Netherlands was out of their control by the end of the sixteenth century, but the Dutch had again subdued the southern part (present-day Belgium). Calvinism had taken root. As the south was far more important than the north, Spain was ready to sacrifice the north to keep its hands on the south. That part of the kingdom, however, was under threat from both the Dutch and the French. Moreover, the Thirty Years' War in the Holy Roman Empire and the hegemony of the Dutch–English fleets in the North Atlantic made it extremely difficult to defend 'Belgium' in an effective way. By destroying the home-bound armadas, pirating coastal areas, and even taking over colonies, the Dutch and English were draining Spain of revenues from its colonies in Latin America (with a large amount of gold and silver to pay the mercenaries falling into Dutch and English hands). The breakaway of Portugal with the Treaty of Tordesillas made things worse, both in the colonies and on the Iberian peninsula itself. Meanwhile, the French interventions in Catalonia threatened the very heart of the kingdom – the union between Castille and Aragon – as well as the Spanish (formerly Aragonese) possessions in southern Italy (Naples and Sicily).

For Spain, peace negotiations were not the tool for progressive warfare that they were for France, but were deemed indispensable in defending the status quo. At that time, Spain was ready to pay a high price for peace, both with the Netherlands and France. The Spanish strategy, however, was to conclude a peace agreement with the lesser danger, the Dutch, in order to have its hands free against the greater one, the French. As mentioned, however, the French had little interest in a peace treaty and therefore had considerable interest in keeping the Dutch at war against Spain and the Swedes at war against the German emperor. Both the Dutch and the Swedes were running out of steam, adding their contribution to the ripeness of the situation – for different reasons, however. The Dutch, because of the high costs of the war and the power that an agreement would give to the House of Orange, were ready to come to terms with Spain, and Spain was ready to come to terms with them (Meijer Drees, 1996). All the major concessions would come from the Spanish side, and the parties more or less had an agreement in the first weeks of the negotiations. They even signed an 'eternal cease-fire' in 1646, but final agreement took a further two years because of France, and even then a Spanish–French agreement

would have been rather unlikely had it not been for the considerable threat of a separate Spanish–Dutch agreement.

Sweden also had its own reasons for wanting a peace accord. At the beginning of the Thirty Years' War, Sweden had been relatively successful under the leadership of King Gustavus Adolphus, but Sweden was a country of limited resources. Its few colonies did not produce the silver and gold required to pay mercenaries; it was engaged in an ongoing competitive struggle with Denmark; and it also had to hold off Russia and defend its interests in the Polish kingdom. After the Union of Lublin with the Archduchy of Lithuania, Poland had gained enough strength to start to become a threat to Swedish hegemony in the Baltic, especially after the defeat of the German Teutonic knights by a Polish–Lithuanian force. The greatest threat to the Swedish possessions in Finland and the Baltic states, however, was tightening its claws around Swedish Ingermannland (the present-day St Petersburg area): the Russian bear was now waking up after freeing itself from the Mongol yoke.

The Baltic offset Sweden's lack of major colonies and was its economic power base, as well as an indispensable part of the economy of the main Swedish ally in the Baltic arena, the Republic of the Seven United Netherlands. The Dutch United Provinces and their fleets fought on Sweden's side against Denmark but, when Denmark became too weak, switched sides, joined the Danes, and defeated the Swedish fleet. As the Dutch Protestant ally became less and less reliable, the other Protestant allies – the Lutheran princes in northern Germany – came under growing pressure from the ever-more assertive armies of the German emperor and the German Catholic states. The fortunes of war in Germany were turning against Sweden, which did not have enough potential to maintain its northern dominance.

If anyone needed peace negotiations, it was the Germans. Germany had been devastated by the Thirty Years' War, and was a hopelessly divided country. Situated at the centre of Europe, the largest and wealthiest of all European states and the successor state of the western Roman Empire, it fell into disarray because of its feudal system. The decentralized state also fell victim to the growing importance of the seven electoral states that decided who would be the Holy Roman Emperor. As the major German states were virtually independent, with all the characteristics of sovereignty apart from formal acknowledgement of it by the highest authorities, the emperor sought to re-establish his power through centralization and, taking his cue from his opponents, tried to use religion as a tool. A peace treaty would not even mean a loss of the Netherlands, which was officially still part of the Holy Roman Empire, as it had already acknowledged its *de facto* independence at the Diet of Augsburg in 1548 (De Schepper and De Vet, 1997: 28).

This introduced to the fight the ideological dimension of justice, which seemed to be a struggle between Catholicism and Protestantism but was, in fact, a struggle purely for power. Other players in Europe took advantage of this opportunity and became involved in the civil war, thereby turning it into an international war. As long as the outside powers still had a sufficient stake in the conflict, the war would rage on, even if the German states themselves were tired of the situation. It was only when the foreign powers also became war-weary that a negotiated solution became feasible. The hurting stalemate in the fourth decade of the seventeenth century created the opportunity at Westphalia, although the French still tried to procrastinate as much as possible. It is no coincidence

that many of the wars in the second half of the seventeenth century were initiated by the French, who were dissatisfied with their expansionist progress in the first half of the century.

Procedures and Processes

The stage was thus set for one of the most important negotiations in the history to date of Western Europe, with all players ready to come to the table, eagerly or reluctantly, as victorious powers or victims. The peace negotiations were a turning point in the struggle for power in Europe, as the 'upwardly mobile' states – such as France, Sweden and the Netherlands – evened the score with the declining forces of the Holy See, the Holy Roman Empire of Germany, and Spain. Through international negotiation processes, this political change projected itself into changes in the formal relationships between the states of Western Europe. The formal inequality of states was transformed into formal equality. The pyramid structure was transformed into a flat one; formal hierarchy was replaced by an informal hierarchy. In a way, the state system was, at least formally, democratized. State sovereignty became a universally applicable way of creating an international order. These newly established principles of justice would pertain for the new international regime. For the moment, however, the negotiations would primarily create opportunities for a new European order where politics, not prerogative or religion, would determine the way in which the continent was ruled.

Adversaries negotiated backward-looking beginnings on the exchange of prisoners of war, and negotiations finally resulted in temporary truces such as the Twelve Years' Truce between Spain and the Netherlands from 1609–1621). During negotiations between the French and their Swedish allies in Hamburg in 1641, it was decided that peace negotiations should be started with their opponents. The Danes pleaded in favour of this proposal at the German imperial court, where Emperor Ferdinand III accepted the idea of peace talks, also on behalf of Spain, and it was decided to invite the Netherlands as well, even though it was not directly involved in the Thirty Years' War (Dickmann, 1959; and Groenveld, 2000).

Münster and Osnabrück were declared neutral. In Münster, negotiations were carried on by the German emperor, German Catholic states, France and Spain, and between Spain and the Netherlands. The German emperor, German Protestant states and Protestant Sweden did their bargaining in Osnabrück, and Denmark, Poland, the Swiss Confederation and several Italian states sent observers. In 1645, the French succeeded in having the representatives of both the Dutch and the German Electoral States accepted at a diplomatic level, which opened the final gate to Westphalia. In the end, more than 190 political entities – about as many as the members of the United Nations today – participated in the overall process. Of these, 109 sent their own envoys, while the others used their allies' ambassadors to monitor the meetings or to put their proposals forward. The negotiations at Westphalia started in 1644, two years later than planned, and were over in 1648.

It was the largest conference the world had ever seen. Only the Germans held plenary sessions: the Protestants in Osnabrück; and the Catholics in Münster. The bulk of the negotiations were bilateral, sometimes face-to-face, normally only through documents, but in the toughest cases through mediators. The role of the mediators in Westphalia was

clearly an active one. Not merely neutral brokers, they also had to steer the process, to promote a favourable climate and to propose helpful ways out of deadlocks. In Münster, the mediators were the Venetian envoy and the papal ambassador, or *nuncio*. Informal mediators intervened in many cases, and these were normally envoys of countries with an interest in a peace agreement between two other states. The Dutch, for example, often mediated between their French ally and their Spanish 'enemy' (Groenveld, 2000). They needed the French for a peace treaty with Spain, but they preferred a weak Spain as ruler in the southern Netherlands to a strong France taking over and therefore directly bordering on Dutch soil (something that would happen some 25 years later anyway when the ally became the enemy under French King Louis XIV).

Westphalia, and particularly the Münster agreement, can be viewed as a system of connected bilateral negotiations. It thus had a multilateral connotation, albeit not in the modern sense of the word. This study therefore proposes the term *multi-bilateral negotiation*, as the meetings had the character of a conference and led to many informal contacts between delegations that were not involved in formal negotiations with each other. It is interesting to note that this kind of transverse or *translateral negotiation*, in combination with regular *longitudinal negotiation*, is also common practice in today's conference diplomacy. In fact, the greater the number of participating parties and the more complicated and numerous the issues, the more translateral negotiations inside and outside the conference rooms are necessary to keep the process flowing. The process of European integration is one outstanding example of this. It is clear, however, that in a situation where multilateral negotiation is not performed and parallel bilateral negotiations between many actors abound, translateral negotiations are even more necessary to keep the fabric in place. Just as today's negotiators use the corridors extensively and the major decisions are often taken outside the conference room, 'at the Congress of Ryswick [in 1697], the English and French negotiators very nearly accomplished the work restoring peace to Christendom while walking up and down an alley under some apple trees' (Matveyev, 2000: 13) – an early version of the famous 'walk in the woods' of 1982 by US and Soviet arms-control negotiators.

At Westphalia there was a quadruple communication problem. First, the negotiators had no conference building at their disposal and had to negotiate in their lodgings. Second, the distance back to their superiors in the capital was enormous, in terms both of time – long distances on horseback through war-ridden regions – and of power, as they received their instructions from the monarchs themselves. Third, questions of rank and status hampered informal negotiations and often led to miscommunication, or even went as far as direct fighting. Fourth, negotiators were on the whole quite intransigent in their negotiation behaviour. In the virtual absence of mechanisms to provide assurances and safeguards, distrust was universal. Verification took a long time and was often highly inaccurate. These obstacles, together with the absence of the multilateral mode, gave birth to a slow and non-transparent process. The consequence of this 'scattered' form of negotiation, which remained the normal pattern until the Congress of Vienna some 170 years later, was a range of treaties without much interconnection, notwithstanding the use of translateral contacts.

The processes in Münster can be regarded as 'diplomatic negotiations', which are defined here as negotiations between official representatives of sovereign (or semi-

sovereign) units. At the Münster peace negotiations, the units in question were sovereign states, autonomous federal states, plus *de facto* independent states that were asking for recognition (in this case, the United Provinces of the Netherlands and the Swiss Confederation). 'Rebels' were also present, but only as part of one of the recognized delegations. The Catalans and the Portuguese, for example, were part of the French delegation. As was noted above, the most important actors – the German empire and its federal states, the kingdoms of France, Spain and Sweden, the republics of Venice (as co-mediator), Switzerland and the Netherlands and, last but not least, the Holy See (as co-mediator) – were never in the same room at any time during the negotiations.

As the negotiations were bilateral, taking place in turn at the residency of each of the parties directly involved, secrecy was more or less guaranteed, but so too was a power imbalance. This system of a set of partially linked parallel meetings, which was customary in the seventeenth and eighteenth centuries, afforded the larger party superior power. Simulations of the 1697 Congress of Ryswick by the Clingendael Institute in 1987 and 1997 have clearly shown how weak the coalitions were (Meerts, 1997b: 29). Their members were not only unable to communicate effectively, but weak transverse communication and negotiation enhanced the power of the stronger parties. While the procedures and processes of the negotiations at Westphalia favoured the larger countries, the smaller parties counted themselves fortunate to be invited. Without the gigantic gathering, they would have been left much more out in the cold, and this is one of the reasons in this day and age why small countries are so in favour of multilateral meetings while their bigger 'brothers' often prefer the bilateral mode. With regard to procedure and process, Westphalia can be seen as being between the old-fashioned bilateral interaction and the conference diplomacy of the twenty-first century.

At Westphalia, proposals could be put forward in three ways. The first was the most formal. An official letter would be sent to the mediator, which he was allowed to open and examine. He would then either forward the letter unaltered, or first negotiate alterations in the text with the sender. The second method of making a proposal involved official papers of a more exploratory nature, while the third method was to make tentative, informal proposals to which the parties did not yet wish to bind themselves. Complete treaty texts were agreed by reaching a series of sub-agreements. In some cases, these complete texts were published as proposals before the parties were allowed to give their opinion. Proposals remained provisional until an overall final agreement was reached (Poelhekke, 1948).

The lingua franca at the Münster negotiations was Latin, but French and Italian were also used. The main language used at Osnabrück, however, was German, a language in which the Swedes were also proficient. The Dutch and the Spanish negotiated mainly in their own languages. In direct contacts, negotiators of the smaller countries often agreed to use the language of the larger country, which added to the difficulties that negotiators already had in terms of power difference. Negotiating in a situation where one opponent can use his mother tongue and the other cannot is obviously advantageous to the former (Marcos, Eisma-Lubbers and Guimon, 1977). All in all, some 800 meetings were held, mostly during the winter. As the generals went off to battle again in summer, the diplomatic process more or less ground to a halt during the warmer weather. How did the negotiators deal with their problems, given the prevalence of warlords, the many

procedural restrictions, the non-transparency of the processes, the procrastinating tactics of the parties, their inflexible positions, and the multitude of problems at hand while a war was raging directly outside the neutral conference cities of Osnabrück and Münster?

The paradox of the negotiations in Münster was the undeniable backward-looking character of the negotiation process leading to forward-looking outcomes. The delegates did what they could to defend their states' interests without taking into account the interests of the collective whole in Europe. This strategy is notably different from the intra-European negotiations of today, where there is a greater balance between national and supranational interests than in the seventeenth century. The delegates had a far less flexible mandate than, for instance, the EU negotiators of our own time; their personal safety was much less well guaranteed; they had to cope with unrestricted power differences; and they were hindered by strict procedures mirroring those power differences. In this situation, they could do no more than negotiate an end to warfare and were denied the capability of working on a more lasting peace by building in forward-looking elements. The backward-looking agreements, however, would have been of no value whatsoever had the status of the negotiating parties remained fixed. In other words, no backward-looking peace deal could have been concluded if the Helvetian, Venetian and Dutch republics had not been acknowledged as genuine states, if the German empire and the Spanish kingdom had not been willing to accept France and others as equals, and if Protestantism had not been accepted as a branch of Christianity in its own right. It was only such structural changes that made situational agreements viable. As a consequence, the negotiation process had a backward-looking character that led to a forward-looking outcome.

People and Posture

It is, of course, even more problematical to analyze the behaviour of the diplomatic negotiators of 350 years ago than of our own time (Kaufmann, 1989: 301). Nevertheless, we can say something useful about the negotiation behaviour during Westphalia, especially the Münster dealings, as extensive and detailed accounts are available. According to Johan Kaufmann, the conference diplomat had to be able to play many roles, including silent partner, lobbyist, orator and procedural specialist (Kaufmann, 1996: 124). Detailed accounts by J.J. Poelhekke, Fritz Dickmann and Simon Groenveld on the negotiation process and the behaviour of negotiators at Westphalia show that, in this sense, seventeenth-century diplomatic negotiators were not really different from those operating in our own time (Poelhekke, 1948; Dickmann, 1959; and Groenveld, 2000).

Negotiators and their governments were inclined to ask for more than they could reasonably expect to get (Fisher, 1971: 86). For several reasons, the willingness to make concessions at Münster was, by contemporary standards, extremely small. The first reason was fundamental: the stature of the participating states. It was extremely important for each actor not to lose face, a backward-looking consideration par excellence. At this conference, where the Europe of medieval unity was to be replaced by a Europe of sovereign states, each state needed to reflect its (supposed) sovereignty to the greatest possible degree in its rights and prerogatives. Every concession made by a state was considered to be detrimental to its own position. This applied most of all to the German

empire, which was about to lose both its internal and its external sovereignty, as well as the right, which it shared with the Holy See, to be the symbol of European unity. The Catholic Church was in the same position. Recognition of freedom of religion by individual states or sovereigns detracted from the notion that the Catholic Church was the sole authority in Western and Central European Christianity.

The same applied to the states that were trying to turn their *de facto* independence into sovereignty *de jure*, as well as to states that were already sovereign but fighting for the best position within Europe. All sovereign states were equal, but some were more equal than others. They bargained extensively over the problem of precedence, and not only in a peaceable fashion; it was not unusual in those days for there to be bloody encounters between delegates' assistants. States' insecurity about their own position led to a hardening of attitudes, reinforced by differences of opinion between the mediators and differences of vision and power within various delegations. These differences were turned into issues of status and resulted in positional negotiations. Hence, before the substance of the meeting could even be discussed, the parties argued at length about the formalities that they felt not only defined their positions, but also protected and defined the stature of the negotiator (read: of his superior). Form had priority over substance and obstructed smooth progress. In fact, the formal opening of the Münster talks was delayed for six months because of arguments about questions of precedence (Anderson, 1963). Before new borders could be defined, the boundaries between the negotiators had to be determined.

From the outset, this highly inflexible structure, which was dictated by the subject matter of the negotiations – namely, establishing the differences between the states rather than pursuing their interdependence – resulted in extremely distributive negotiations. One party's gain was another party's loss. Maximization was paramount. If Spain wanted peace, it would have to offer more than just recognition of the Dutch Republic. Moreover, the people of Amsterdam and Zeeland, demanding the blockade of the southern Netherlands, did not seem to care that this would be punishing former fellow compatriots who had themselves become victims of the Spanish *Reconquista*. If France wanted to increase its power, it had to be prepared to support the advance of Protestantism – an anathema within its own borders – in Germany and the Netherlands. Such opportunism was not considered at all unethical. The question was how tough a stance to adopt. Those who wanted peace needed to be more willing to make concessions than those who would benefit from the continued pursuit of justice through war. Thus, it was the various interests of the factions within the participating states that contributed to determining how willing the parties were to make concessions. War remained an alternative to an agreement.

Maximizing one's power through the use of force was an acceptable and even approved tool of diplomacy, as evidenced by the fact that the war continued to rage during the negotiations themselves. Negotiating was itself seen as something of an admission of weakness. It could lead to situations where the stronger party forced an agreement on the weaker party, resulting in the losing party remaining resentful towards the other side and waiting for a chance to exact revenge. The negotiation might be a success in the sense that a treaty had been concluded, but the aim of reaching a satisfactory resolution of the conflict for both sides was still light years away. If certain goals could not be achieved by force, only two options remained: negotiation; or avoidance. Negotiation was simply a way

of continuing the battle using other means and resulted, sometimes literally, in bellicose behaviour; there are many examples of carriage races and fights between servants, as happened between the Spanish and Portuguese delegations. It also resulted in a wait-and-see attitude, because the tide on the battlefield might turn, and a dominant position might help to enforce one's own demands.

The use of power outside the negotiation rooms thus resulted in a certain abstinence from power inside them. The negotiators of the more powerful parties often refrained from making use of their superior position because they were afraid that any agreements they might reach would be weaker than agreements dictated by military victory. Everyone waited for the battle tides to turn, and the negotiations in Münster can therefore be seen as encouraging the further use of force. The Treaty of Münster may – for some countries – even be viewed as a 'break' that was deliberately created for the purpose of achieving a better position in a renewed conflict, a forward-looking aspect of a negative character. The stronger parties could not yet overturn their weaker opponents. At issue was the 'power of the weak' (Jönsson, 2000: 18). Time was running out for them, however, so some of the stronger parties had to buy time through a treaty. Confirmation of this may be seen in the subsequent wars that the states fought to consolidate their own positions in the hierarchy of states.

An effective use of superior power was seen as completely legitimate within the peace talks, as the structure of the meetings implies. As argued above, the bilateral nature of the negotiations afforded the stronger party the chance to capitalize on its superior power – at least, if developments on the various battlefields warranted this. At Münster, virtually no coalitions were formed – the strict mandates of the negotiators left no room – although multilateral conferences are usually an outstanding opportunity for coalition-building. The meetings' formalities also restricted the informal formation of alliances. Some parties did, however, attempt to win over negotiators to their side by means that would be considered unethical today. For example, bribery was rife, but it usually had little effect. Payments were considered, rather, to be a security measure: states paid their own allies large sums of money to prevent them from accepting money from the opposition. In fact, it was also common practice to accept money from the opposition. The charms of the ambassadors' wives were also deployed to soften the position of some negotiators. The Spanish ambassador's wife, for instance, played just such a role at the Ryswick peace conference.

Everyone at Münster was constantly trying to affect the balance of power, but the net result was that the delegations suffered from a chronic lack of funds and only ended up worse off, with no real shifts in position having taken place. The real victims of this were the townspeople of Münster, for if an ambassador absconded and left large debts, it was almost impossible to recover them. The Münster conference was, in fact, little more than a means of communicating decisions that had been made elsewhere. Progress could be made only if the time was ripe for an agreement outside the negotiation rooms. Whereas the goal of negotiations nowadays is to reach an agreement, the aim of the Münster negotiations was to have a forum for sealing decisions that were made externally. In other words, whether any negotiations took place in the sense in which we understand the term today is seriously open to doubt. The balance of power at the negotiating table was therefore relatively irrelevant, because power was not going to be used there anyway. What mattered was the balance of political and military power outside Münster.

Münster was a conference of diplomats, not a conference of rulers or their direct political representatives (Dickmann, 1959). In that sense, Münster was different in principle from the conferences at Vienna and Versailles in later centuries. There was no direct possibility of any real compromises being agreed, and the difference in power between those mandated and those doing the mandating led to loss of power on the part of the envoy and, consequently, to a marginalization of Münster as a whole. This is illustrated by the problems that arose in communicating with the negotiating states' capitals. Although Prince von Thurn und Taxis established a regular postal service linking Münster, Vienna, Amsterdam, Cologne and Hamburg in 1643, messages were often intercepted, both by plundering soldiers and by the opposing party. Moreover, it took a very long time for an answer to be returned, which delayed the negotiating process even further. The geographical distance between the capital and Münster entailed long travelling times, which emphasized the difference in power between the diplomats and their masters.

The delegations consisted of all sorts and conditions of people, and their procedural conflicts reinforced the negotiations' backward-looking position politics. It was beyond dispute that the delegation's leader was formally in charge, if only because he was representing his sovereign. Delegation leaders representing kingdoms and republics were either members of the high nobility or the patrician class. They were sent to Münster for many different reasons, at best because of their experience and virtue, and at worst because their sovereigns wanted to get rid of them. The reason for their removal from court varied from the political, as in the case of the French, to the personal. The King of Spain, for instance, sent his ambassador because he wanted to separate him from his young wife in Madrid. Representatives of the Mediterranean countries, in particular, saw Münster as a punishment, on account of the cold weather, bad facilities, and the fact that it was situated far from the centres of power and in a country that was still partly at war – and dangerous. Although the town itself was safe, because the emperor had stationed a special regiment of soldiers there, there were still gangs of soldiers roaming about the countryside.

Some information is available about the behaviour of the delegation leaders. Count von Trauttmansdorff, the ambassador of Emperor Ferdinand III and chief representative of Germany, was described as decisive, yet friendly. The French ambassador, the Duke de Longueville, tried to improve the atmosphere by using his young wife's skills and charms. This put their residence at the centre of diplomatic life in Münster. Johan Oxenstierna, however, the Swedish ambassador and son of the Swedish chancellor, Axel Oxenstierna, was wavering, blunt and, even worse, uncontrolled. As self-control was considered an indispensable quality in negotiators, the last characteristic violated seventeenth-century standards. The Swedish ambassador also offended good taste with his extreme vanity: trumpets blared when he got out of bed, when he ate his meals, and when he went to bed again (Poelhekke, 1948).

In almost all cases, the delegations' 'seconds-in-command' were lawyers of great repute. There seems to be little doubt that these specialists had more influence than their official leaders, who were sometimes more interested in worldly pleasures than in substantive negotiations, in so far as we can speak of substantive negotiations at all. Pleasures were only sparingly available and were therefore created, at great expense,

by the gentlemen themselves. Bickering between ambassadors and their seconds-in-command was a common occurrence, partly because the former held the latter in such contempt.

In some cases, the seconds-in-command also had differences of opinion among themselves. For example, one of the two French seconds-in-command, the Count Claude d'Avaux, was, like the ambassador, an opponent of the French policy of supporting the German Protestant princes. The other, Abel Servien, found it less objectionable. Both men worked on the same files, a seemingly impractical arrangement, unless one considers that they were, in fact, being used to check on each other (Tischer, 2008). They each represented different factions of the court and continued their battle in Münster. They reported to the capital independently and tried to blacken each other's reputation as much as possible. Within the Swedish delegation, there were great frictions between Johan Oxenstierna, who represented his father, the chancellor's interests, and his second-in-command, Johan Adler Salvius, who promoted the interests of Queen Christina of Sweden. Adriaan Pauw, Godard van Reede and Johan de Knuyt, the Dutch diplomats, also clashed regularly, which is not surprising when one considers that they were each promoting completely different interests (those of Holland, Utrecht, and the governor of the Republic, respectively). Delegates also tried to stir up differences of opinion in other delegations to weaken their position, or to help restrain these opposing views if they were a hindrance to agreement (Poelhekke, 1948; Geurts, 1997).

Tensions between the delegations were expressed in all sorts of precedence disputes, which were sometimes settled by threats or the use of violence. Ambassadors seized every opportunity to show their precedence over others; and lower-ranked diplomats did all that they could to gain higher formal prestige. The electors eventually managed to have themselves considered as sovereigns for the duration of the talks, which immediately gave them a higher status. This temporary power of the electors was responsible for the inclusion in the final agreement of a number of conditions on the exercise of certain important imperial powers. Electors with an ecclesiastical status sometimes called upon this status to gain temporary precedence. The Church was ranked highest of all, so the papal nuncio (envoy) was the only one allowed to sit on a dais. By wearing their vestments, some electors with the rank of bishop managed to gain a better place during solemn ceremonies (Rietbergen, 2000: 92). The French tried to discriminate between monarchies and republics, with republics, of course, thought to be of a lower order. The French were not prepared to accept equality of status until, on one occasion, the representative of the Doge of Venice threatened to leave the conference permanently.

The French were apparently not primarily interested in stimulating a fruitful negotiating atmosphere, but preferred to give priority to prestige issues. For example, considering the Venetian mediator to be inferior in rank because he represented a republic and not a monarchy, they treated him with contempt by waiting for him at the foot of the stairs instead of at the door of his carriage. This ceremony was repeated upon his departure. The attitude shown by the French a few years earlier during talks on the continuation of the French–Dutch alliance was even more offensive: at every available opportunity, they made it clear in their ceremonial behaviour towards the Dutch that the Republic was of a lower standing than France. Indeed, irritation at this behaviour contributed to the Dutch decision to dissolve their alliance with France. The Spanish, by contrast, were much

smoother operators in this respect. At Münster, for instance, they went to sign the treaty at the quarters of the Dutch legation – an action that typified the attitude of Spain towards the Republic, for it was very much in Spain's interest that the Republic should withdraw from its alliance with France. The handling of questions of rank had a strong emotional effect on the players involved, and a decisive impact on the willingness of negotiators to compromise.

Nor, often, were relationships with the various home authorities very good. This was a result of chronic financial worries caused by expenditure on all the pomp and splendour that the delegations needed to emphasize their superiority, expenditure that the capitals were unwilling to cover in its entirety. The need to bribe other parties was another cause of financial troubles. Money was offered even to the highest nobles, who accepted it eagerly. The republics seemed to have more scruples in this matter than the monarchies. The representatives of the Dutch States-General, for example, prohibited the acceptance of gifts, but this was circumvented by directing the gifts to the negotiators' wives.

It cannot be said, therefore, that the delegations paid no attention to cultivating their relationships with other parties, but they went about it in such a way, and in such an atmosphere of mutual distrust and pomposity, that any positive effect on the mutual relationships was minimal. In a situation in which the mandates were severely restricted or non-existent, however, it is doubtful whether the relationships between the diplomats were of any real significance. In some cases, countries even refused to associate with each other during the conference or to use the translateral opportunities that were available. This is most clearly illustrated by the refusal of France and Sweden to meet at all, which was in part why the peace talks had to be located not only in Münster, but also in Osnabrück (Hamilton and Langhorne, 1995).

There were endless discussions and, in that sense, the parties can certainly be said to have explored the possibilities of reaching an agreement. It is doubtful, however, whether this really led to any outcome that integrated opposing viewpoints. The position-based manner in which the parties conducted the negotiations and the limited instructions that they were given did not leave much room for genuine forward-looking exploration of new options for both justice and peace. Furthermore, negotiations on details were left to lawyers of lower rank, who knew little about the agreement's overall structure. The ambassador of the Holy Roman Empire, Count von Trauttmansdorff, considered that these underlings only confused matters, and the Venetian mediator, Alvisi Contarini, deemed them completely incompetent to carry out the sort of negotiations involved. Exploration was more a question of espionage and intrigue than of any genuine search for new and creative solutions. If, however, we consider exploration as the interaction that takes place prior to the start of negotiations proper, there was indeed extensive exploration – or rather, the start of the negotiations proper was continually postponed. In fact, the whole process might better be described as 'playing for time' than 'exploratory negotiations' – playing for time that was intended to put the other party off balance and to strengthen one's own position (Poelhekke, 1948).

In general, the negotiations that took place in Münster were indirect, whereas those that took place in Osnabrück were direct. By the mid-seventeenth century, the use of mediators had become relatively unusual, but they were still employed at Münster. The papal nuncio Fabio Chigi, and the Venetian Alvisi Contarini, acted as mediators and, as far

as we know, they conducted themselves as neutral mediators, formally maintaining their distance from the negotiators (Poelhekke, 1948). They did not dine with them, nor did they accept any gifts. Up to a point, however, each mediator clearly had his own hidden agenda as well. For the nuncio, it was important that the power of the Protestant states be limited; for the Venetian, the main issue was peace on the continent, as the turmoil in Central Europe was not conducive to the Venetian transit trade. Furthermore, Venice was under threat from Turkey and would therefore welcome some military assistance. The other countries were well aware of these hidden agendas, and limited the role of the papal negotiator to mediation only between Roman Catholic countries.

The involvement of the two mediators made it both easier and more difficult to explore options. On the one hand, by creating a buffer in this way, direct encounters were avoided, which meant that options could be explored without the risk of immediate confrontation. On the other hand, it hindered any direct, informal contact, ruling out from the start much chance of flexibility in the negotiating process. Where face-to-face negotiations could be practised, for example between the Spaniards and the Dutch, the process ran much more smoothly, but this also had to do with the greater amount of common ground between them, so that cause and effect were circular.

Prevention and Prospectiveness

What came out of the Westphalian negotiation processes and how forward-looking were they? Although there is no overall Westphalian peace agreement, but only a number of separate treaties between different parties, we can still describe the Peace of Westphalia in terms of different agreements with several common denominators that collectively changed the political theatre of Western Europe. The short-term common traits were backward-looking – that is, peace that was achieved through ending hostilities and settling conflicts that had bedevilled the Christian European states during the first half of the seventeenth century. The mid-term commonalities were that all of the pacts tried to create a peaceful situation and more fruitful cooperation for the remainder of the seventeenth century. The long-term effects were the establishment of new criteria of justice: a new regime and a new political order for Europe and, as it happened, for the world as well.

The states at the time saw the deteriorating political situation as a common problem needing a cooperative solution. It was not at all feasible to deal with this common issue in a multilateral setting, yet the countries envisaged the need for a gathering of all the parties involved, even those – such as Denmark and Poland – that were only indirectly affected by the disastrous Thirty Years' War. At the same time, they took the opportunity to settle other long-term conflicts, such as the Eighty Years' War. Translateral negotiations and coordinated mediation were effective enough to create a good deal of synergy to compensate for the lack of multilateral negotiation processes and very inflexible procedures.

Most of the agreements on international political matters confirmed the status quo of 1648 in Europe and overseas. On these issues, Münster and Osnabrück were forward-looking, as the political agreements that put an end to an unstable situation laid the foundations for new regimes. They were based on a status quo that, in its turn, was based on a 'mutual hurting stalemate', the only alternative to which was a peace pact.

The forward-looking outcomes, however, were based on backward-looking agreements, settling issues that had already been settled in reality, and an acceptance of painful concessions that were already lost, sometimes for decades.

In a century in which saving face was the most important characteristic of the ruler and his land, it was extremely difficult for the countries to accept changes that could be seen as losses. Even if one gained something else in return, losing was simply 'not done'. Negotiators could often only agree on maintaining the status quo; new solutions appeared to be intractable in nearly all short-term outcomes. As the restoration of a true status quo was impossible, however, new arrangements were made on national political and religious matters, and these outcomes would last for centuries. This was possible only in negotiations where the internal dimension had precedence over the external, where, in other words, more control could be exercised and deals could go beyond status-quo agreements.

The Eighty Years' War was ended by an agreement in Münster between Spain and the Netherlands, by which Spain gave up the sovereignty that it had lost half a century earlier over the northern part of the Netherlands. Both Spain and the Netherlands kept the overseas possessions that they held at the time of the agreement. The borders between 'Belgium' and the Republic remained unchanged, but had to be fixed in detail. This was a difficult question as the *de facto* borders cut through Flanders, Brabant and Limburg. To avoid problems, a *chambre mi-partie* (bilateral chamber) was established to fix the correct frontier and to decide on questions of ownership, and both parties were equally represented. This chamber is an interesting expression of the forward-looking outcome of a backward-looking, status quo-compliant process. The institution had a time limitation, but is nevertheless an interesting phenomenon, as institutionalized international cooperation, let alone inter-state arbitration, was nearly non-existent in seventeenth-century Europe.

The Dutch blockade of Antwerp came to an end, but only formally. In fact it remained, with high import and export tariffs being imposed not only on Antwerp but also on the other Flemish ports to avoid indirect trade with Antwerp itself – measures that still fuel Flemish resentment against the Dutch today. The peace treaty, however, can be characterized as forward-looking, settling issues so thoroughly that it provided for a stable peace. Indeed, Spain never really became the enemy of the Dutch again, in contrast with the French ally, which became an enemy of the Dutch state for the next 150 years. It should be noted, however, that this Spanish–Dutch treaty ended a war that had already ended by itself; it merely confirmed the existing peace, and this might have been the main reason for its forward-looking character.

A formal reason to characterize the Spanish–Dutch pact as forward-looking was the decision that all sovereignty ties, not only between the Netherlands and Spain but also between the Netherlands and Germany, would thenceforth be cut. It was in 1648 that the Dutch officially left the Holy Roman Empire, an empire that they had once provided them with a Roman king who was never enthroned, as he was killed by the Frisians. (As an interesting aside, some 200 years later, the Dutch were officially drawn once more into German affairs when the province of Limburg entered the German Confederation as compensation for the incorporation of western Luxembourg into Belgium.)

Another argument for labelling this treaty as forward-looking was the establishment of the *chambre mi-partie*. This can be seen as the creation of a very limited new regime, in the sense of an institution to guarantee peace and to help to solve currently unknown differences of opinion, a truly forward-looking outcome but on a backward-looking basis.

The peace agreements to end the Thirty Years' War, which continued to rage until the very last days of the negotiations, were on the whole quite forward-looking in creating peace for some decades at least, although it would not be too long before France and Spain became entangled in the Twenty Years' War. Here, it was the military and political situation that primarily determined the final agreements while, in the Spanish–Dutch case, judicial reasoning played a much larger role. In the negotiations between France and Spain in Münster, no agreement could be reached and the war continued for another ten years (until 1659). More successful, however, were the negotiations in Münster between France and Germany that dealt with German territories west of the River Rhine (which had already been in French hands for nearly 100 years). Some of these regions were owned by the Habsburg monarchy itself, so the Spanish resisted any concession on them. As this blocked any peace agreement, the Germans had to decide to cut ties with their Spanish ally on this matter, just as the Dutch had to break their alliance with France in order to be able to conclude an agreement with Spain.

The German peace agreement with Sweden in Osnabrück could also be attained only through German concessions, both on land and money. In contrast with the French deal, however, Sweden did not obtain sovereign rights over the territories along the Baltic coast, which remained nominally within the German realm. This had the advantage of bringing the Swedes into the German League, where they could now participate in the collective decision creating between the German states in a legitimate way. These agreements provided some stability, although not to the extent of the Spanish–Dutch pact, and legitimized future Swedish interventions in the affairs of another 'state'.

The agreements also led to the Osnabrück settlement of national political and religious differences within the Holy Roman Empire. It was not just a peace accord. It was a Christian peace, a *Pax Christiana*. Politics and religion were intertwined; they were now two sides of the same coin that bore the name 'peace'. The religions were distributed over the empire on the basis of the situation in 1624. In other words, the predominant religion in each fiefdom would be determined by the religion pertaining in that *Normaljahr* (particular year). Catholicism, Lutheranism and Calvinism were legitimized as official religions of the empire. A major change was the ending of the requirement that subjects automatically assumed their ruler's religion (*cuius regio, eius religio)* – a repudiation of the 1585 Treaty of Augsburg. If the ruler changed his/her religion, the people could not be forced to convert as well. This was an extremely forward-looking outcome that can be seen as a crack in the theory of monarchical sovereignty and a step in the direction of sovereignty of the people. It had pertained in republics such as Venice and the Netherlands, but never before in monarchies. Even in the republics, however, the devolution of sovereignty was slow, residing in the hands of the richest people.

Furthermore, the relationship between the emperor and the German states had been changed radically by the Osnabrück conference, not only in its outcome, but also in its process. The lords of the German states had negotiated with the sovereigns on a more or less equal basis, and it proved impossible to take back this prerogative later.

The lords already regarded themselves, and were in fact acknowledged, as sovereigns in their own domain. It should therefore be no surprise that, short of full sovereignty, the German states were given far-reaching mandates for home rule. They already had the *ius territorialis* (territorial rights), and now received the *ius foederis* (treaty rights) – another redefinition of justice, with the terms of an alliance coming into play. Germany now became a confederation of 'almost equals', retaining the difference between those states that had a say in the emperor's election and those that had not. The lords could now conclude alliances, conduct international relations and have their own foreign policy, with the only bar to full sovereignty being the precondition that their politics should not harm the interests of the Holy Roman Empire as a whole. From 1648 onwards, the German emperor could no longer claim to be the most important and highest monarch in Western Europe, the successor to the emperors of the western Roman Empire, just as the Russian tsar regarded himself as the inheritor of the eastern Roman Empire. The Westphalian talks resulted in peace but disunity in Germany and, in that sense, foreshadowed Bismarck's policy of reunification in the second half of the nineteenth century.

A negative element in this development was the enormous multiplication of actors in Europe's foreign affairs. This enhanced the risk of new frictions and new wars. Westphalia found a forward-looking solution, delegating France and Sweden as guarantors for keeping the peace in Germany. Both in the treaty between Germany and France, and between Germany and Sweden on 24 October 1648, these 'outside' powers were given the responsibility of upholding the treaties. To make this feasible, the treaties included an anti-protest clause that disallowed any protest by the Holy See against the treaties – another redefinition of justice. This was forward-looking indeed, as the Pope did protest, refusing to accept the religious terms of all the treaties, including the Spanish–Dutch treaty, which was even more forward-looking as it comprised the dissolution of the papal claim of religious sovereignty over Europe. Just as the emperor lost his claim to political monopoly, so the Pope lost his claim to religious monopoly. Not only were the states now equal, but so were the religions. The Pope *de jure* nullified the treaties for reasons of saving face, status, religion and politics. The Roman Catholic Church did, however, refrain from a *de facto* attempt to undo the peace agreements that had been attained (Rietbergen, 2000: 98).

Although the agreements can be seen as forward-looking and did end the ongoing conflicts in many areas, this did not mean that all problems were solved, for wars soon broke out as a consequence of other disputes. Nevertheless, Westphalia had become the basis of the peace treaties that followed. Until 1714, the peace treaties of Westphalia were referred to as the basis of later peace agreements, as the 'mother of all treaties', for at least the next 70 years. During that time, Westphalia was still seen as a moral guide for justice in dealing with international relations in Europe and its dependencies, until the French Revolution destroyed the old order. The hierarchy of states and religions was gone forever, and the equality of sovereign states and religions lives on to this day. These are the most forward-looking outcomes of all.

In Conclusion

In the seventeenth century, the agreements to end the Eighty and Thirty Years' Wars established new regimes in Europe and its dependencies, most of them long-lived. This chapter has analyzed the negotiations in Westphalia that established the principle of the equality of states having full authority within, and only within, their own territory. It also created equality between religions and thus eliminated religion as the source of political power. It also did away with the highest political and religious authorities – the Holy Roman Emperor and the Pope – and, in that sense, it put a final end to the myth of the Roman Empire still being the overall European regime, albeit in a transcendent form. With republics now accepted as equal to monarchies, the norm of a ruler being the only power within each sovereign unit was weakened, and the seed of sovereignty of the people was planted. Indirectly, Westphalia contributed to the breakdown of absolutism and the growth of the first rudimentary roots of both democracy and nationalism.

Before Westphalia, war was the rule and negotiation the exception. The conference made it clear that peaceful methods of conflict resolution should be the rule for the future. It did not work that way, however, as the newly established balance of power was still highly unstable. The decline of Germany and Spain and the growth of France and Britain were still to reach their equilibrium. Seventeenth-century Westphalia was the eruption of the volcano, but there were many aftershocks to come before the Congress of Vienna in the early nineteenth century. The procedures established by Westphalia were weak, especially compared with those that regulate the relations between countries today. Westphalia did, however, create the forerunners of the sophisticated mechanisms of the twentieth century. It established some rules and regulations for the peaceful solution of conflicts by diplomatic means (Melissen and Van Staden, 2000: 10), for 'Implied in the Münster Treaty was the theory that [...] Sweden and France had rights of intervention in the [German] empire' (Doran, 1971: 94). Westphalia came at a time when the social and economic situation in Europe was changing dramatically, and it constructed the political regime that fitted this societal evolution.

It should be noted, however, that this has been the outcome, but was not so much the intention of the negotiators:

> The peacemakers at Westphalia were not concerned with establishing a system or framework of international relations that would endure for centuries. What Westphalia did do [... was to envisage] Europe and [...] the rest of the world [...] as being made up of sovereign, autonomous states. What remained undecided was how those states ought to behave toward one another (Wright, 2006: 301).

The most important result – that is, the establishment of a system of equal sovereign states as the structuring principle of our world – is still relevant, even if sovereignty has a much more limited notion today than in 1648 (Schrijver, 1998: 141). The only way to put an end to the desynchronized situation of seventeenth-century Europe when armed conflict failed was through international negotiation by diplomats, in spite of the ineffectiveness of some of these processes at that time. That said, in view of the recent failures of important diplomatic international negotiations, such as those on climate change, we may have

reason to review how we negotiate today in complex settings where many countries try to find a common denominator.

The proliferation of nation-states, growing necessity of having treaties ratified, rising internal turmoil in many modern states, increasing regulation of international issues and the growing involvement of non-state actors create a multilateral complexity that seems to prohibit effective international negotiation processes and decision-making (Brower, 2000: 77–78). Comparing then and now, perhaps the Westphalia negotiation process was not so ineffective after all. That does not mean, however, that the regime that Westphalia established will be as suitable a framework for cultural, social and economic developments as it was in the mid-seventeenth century. After all, Westphalia was a typical European solution for European problems of centuries ago. The 'Eurocentric' character of the Westphalian system (Harding and Lim, 1999: 10) simply may not fit the globalized world of today and tomorrow.

CHAPTER VII

The Eighteenth Century: Behaviour of Negotiators

This chapter is based on Meerts and Beeuwkes (2008). Peter Beeuwkes helped with the research for the original article.

CHAPTER VII: THE EIGHTEENTH CENTURY: BEHAVIOUR OF NEGOTIATORS

The Peace of Utrecht – in fact a series of bilateral treaties – put an end to the Spanish War of Succession from 1702–1713, a war that affected nearly all of Western and Central Europe, as well as parts of Asia, Africa and the Americas through their European colonies (Bruin, De, 2013; Onnekink and De Bruin, 2013). The Spanish War of Succession has even been labelled the first world war in history because of its spread over the world (Onnekink and de Bruin, 2013: 42). It was also the 'first peace settlement to include an express reference to the "balance of power" in treaties' (Lesaffer, 2013). Others refer to it as a 'replay of the Westphalian drama' (Holsti, 1991: 72). It is anyway a 'series of compromises, a settlement without clear winners or losers, at least in the short term' (Ghervas, 2013: 28). This chapter will analyze these negotiations, comparing them with other negotiations in the Netherlands around the turn of the seventeenth and eighteenth centuries, with a special eye to the behaviour of the diplomatic negotiators in comparison to those of the twenty-first century. Furthermore, the 'Utrecht' negotiations will be compared to two other important negotiations on Dutch soil: those of Nijmegen; and Ryswick.

What was it about?

> [T]he essential purpose of a peace is to protect the independence of the dynastic sovereigns by limiting hegemonic designs and policies. The purpose of the Utrecht settlements was not so much to avoid future wars as to resolve the issue of hegemony – a replay of the Westphalian drama (Holsti, 1991: 72).

Holsti identifies the 1713 Peace of Utrecht as one of the five major peace settlements in Europe since the Peace of Westphalia in 1648. Of these five (the remaining three – as mentioned in Part One – are Vienna, Versailles and San Francisco), he values Utrecht as the negotiation process with the feeblest outcome. He identifies eight prerequisites (Holsti, 1991: 340) for a forward-looking outcome (Zartman and Kremenyuk, 2005), meaning a substantial agreement creating a regime for effective management of future conflicts: governance; legitimacy; assimilation; deterrent; conflict resolution; war; peaceful change; and future issues. In Holsti's view, Utrecht only satisfies the first two factors, but these are still of great importance, as governance and the assimilation of states into a common agreement are stepping stones in the direction of some kind of proto-European regime that Westphalia hardly created. After all, while Westphalia changed the meaning of sovereignty in Europe, it did not clearly define it. Sovereignty in the seventeenth and eighteenth centuries is not as watertight as it is today (Schrijver, 1998: 141), although developments at the end of the twentieth century indicate that sovereign rights are

eroding, which might mean that we are – in the long run – heading towards the same unclear situation as 300 years ago. The condition of sovereign rights 300 years ago was of great importance to the question of the behaviour of states and their negotiators, as 'norms surrounding the institutions of diplomacy were very much tangled up with the issue of sovereignty and the status of the dynast' (Holsti, 2004: 185).

This chapter views the Peace of Utrecht from the perspective of its contribution to a better organized Europe, where conflicts might be solved through peaceful means as much as possible. Peaceful contributions to the European equilibrium could only be made by 'periodic consultation and negotiation among the great powers, and by some degree of willingness to allow every strong power at least a little scope for its ambition to add to its territories and its influence' (Roberts, 1947: 3). We look at the Peace of Utrecht here as a forerunner of present-day international negotiation processes, asking ourselves what they have in common and where they differ.

Although Westphalia changed the relationships between the European states, making them all equal in principle, some remained more equal than others. This is, of course, still true today, but the problem is not so much the power differences, but the question of how to regulate them in such a way that the constellation of states and the positions of their rulers will not be in constant danger. This poses the issue of hegemony and how to manage it. The question of hegemony is a major problem in European history, especially after the breakdown of the medieval system whereby the Pope and the Emperor of the Holy Roman Empire were the supreme sovereigns in Europe. As successors of the western Roman Empire, they were the spiritual and political hegemons. When they lost their religious and political legitimacy respectively, the scramble for dominance became the focal point of inter-state relationships. Westphalia created religious peaceful coexistence; Utrecht had to do the same for the political arena, establishing some kind of regulatory regime. As pointed out in the previous chapter, Münster and Osnabrück produced an embryonic facility – the *chambre mi-partie* – appointing France and Sweden as guarantors of the agreement (Meerts, 2005b: 34–35). With the peace negotiations in Utrecht during 1712 and 1713 putting an end to the Spanish War of Succession, dynasties and states tried to settle the issue of power balance on the continent and abroad, which does not mean that the Peace of Utrecht can be seen as a conscious attempt to create some kind of regime to settle differences (Roberts, 1947: 240). However, it was an important benchmark in a century of constant *renversement* (reversal) of alliances, making it hard to understand the diplomatic history of the eighteenth century (Aalbers, 1980: 35). 'The Utrecht settlements do provide insights into the problems of international relations in an environment of anarchy. Unlike the other multilateral conferences that preceded it, the diplomats [...] were concerned with order and stability' (Holsti, 1991: 72). Moreover, Utrecht did work when the first serious threat to its integrity, the Spanish attempts to unite the crowns of France and Spain after the death of French King Louis XIV, was countered by the 1717 Triple Alliance of France, England and Holland (Veenendaal, 1956: 29).

How, then, to settle the issue? Through war or negotiation? In the seventeenth and eighteenth centuries, war was the dominant mechanism in settling external disputes. This did not mean that negotiation had no role to play, but it is very much seen as being a sub-tool of warfare. Louis XIV of France used peace negotiations in order to create pauses in his wars; he needed breaks to regroup, to prepare for the next war. Slowly and truly,

however, the process of negotiation gained more respect, albeit in connection to the use of violence. The best way to peace is through war, the German emperor said, as the War of Spanish Succession raged through Europe (Doesburg, 1886: 120). The hard-fought last-ditch French victory in this war, at Denain in July 1712, created a 'mutual hurting stalemate', thereby opening the road to Utrecht. Without this victory, the war might have dragged on and more damage would have been done before the states accepted the necessity of negotiating a final and lasting peace. Perhaps negotiation is war by other means, but the two are anyway interconnected in a symbiotic relationship (Meerts, 2006b) and in 1712 it was up to the negotiators to take the heat. Meanwhile, the war did not come to a full stop.

The Political Context

The big question in the early eighteenth century was: who will dominate Europe as the Habsburgs lose their grip on their lands and thereby on the surrounding states? The erosion of Spanish power and the gradual dissolution of the German empire created a power vacuum in Western Europe, with France in the wings to fill that gap. Stability and equilibrium on the continent was of great importance, not only to the continental dynasties, but also to the European sea powers: Britain; and the Republic of the United Netherlands. Britain was still struggling with itself in the second half of the seventeenth century, but came to the fore at the beginning of the eighteenth century. The Republic of the United Netherlands, which dominated trade and was a maritime world power – was losing ground at the beginning of the eighteenth century, partly because of its outdated political system, which was a confederal system that supported the expansion of its commercial interests as long as no other power competed with it in a serious way. This became obsolete in a massive confrontation with France on the continent itself. France, which was regaining strength by suppressing the Huguenots and centralizing power in the hands of an absolute monarch, could now turn to the outside world. France could now radiate energy, which had been used for managing internal problems, into its international environment. As France began to expand its zone of influence and territory, the continental (German empire) and maritime balancers (the Republic of the United Netherlands and the British Kingdom) had to act again. This new counter-offensive resulted in the War of Spanish Succession at the start of the eighteenth century, which cannot be understood without its immediate pre-history, of course.

One starting point could be the beginning of what some call the Forty Years' French–Dutch War (1672–1712) (Deursen, 2005: 163). However, as our time-span should not be too wide and as this chapter deals with negotiators and their behaviour, we will begin with one of the two important international negotiations on Dutch soil: the Peace of Ryswick in 1697. The Peace of Ryswick was mediated by the Swedish diplomat Niels Eosander, Baron of Lilliënrot, and concluded the Nine Years' War (1688–1697). Several treaties were signed, but none of them had the same wording. However, all of them indicated that – at least in a formal sense – this peace should be seen as forward-looking. Terms such as 'fruitful and inviolable', 'religiously and sincerely observed', and 'universal and perpetual' (Clark, 1970: 381) indicated the political intention to go for peaceful relations between the sovereigns. François de Callières', one of French King Louis XIV's *envoyés extraordinaires plénipotentiaires* (special envoys), was impressed by the value of this negotiation process

and wrote a book on lessons learned for other diplomats, including how to behave in an international conference like this and which techniques would help to conclude a good agreement, for example by putting the diplomats in *quarantaine* (quarantine) (Lempereur, 2002: 11). Notwithstanding the high-brow phraseology of the Ryswick Treaties, however, the French were fighting again within four years. In hindsight, these negotiations were a tool in French warfare, and they provided breathing time. More importantly, provisions for dealing with future conflicts – or at least diminishing the prospects of war – were lacking altogether. The French kept their forces on the same strength as during the war.

Ryswick did not solve an important problem: the question of the Spanish Succession, which had been the focal point of French foreign policy ever since 1665, the year when the Spanish King, Philip IV of Habsburg, had died. He was succeeded by a four-year old frail child, Charles II. Numerous attempts were made to solve the Spanish question through negotiations, but to no avail. When Charles II died in the year 1700, he left all of Spain and its oversees possessions to Philip of Anjou, a grandson of Louis XIV, King of France, the reason being that he did not want the ailing Spanish Empire to crumble further. The danger of Spain and France becoming united under kings of the same dynasty – and perhaps under one crown in the future – caused the War of Spanish Succession from 1701–1714, defending the Austrian claims to the Spanish throne. The main continental and sea powers (the German empire, and Britain and the Netherlands, respectively) united in a new Great Alliance in 1701 to contain France within its borders. This was yet another step in the struggle for hegemony in Western Europe, a repetition of all the other wars with France and its direct neighbours, albeit with another label. The actual war – with the German emperor, Britain, the Netherlands, Hanover, Prussia, Portugal and Savoy on one hand, and France, Spain, Bavaria and Cologne on the other – only started in 1702 and would come to an end in 1713. Peace negotiations in Utrecht in 1713) and Rastatt in 1714) would conclude the conflict. Both sides had their victories and suffered their defeats, and at the very end not much had changed. Louis XIV did not succeed in expanding France, thanks to allied generals such as the Duke of Marlborough. But at the same time, France could not be decisively defeated. A compromise on Spanish Succession was reached: Philip remained king, but the thrones of Spain and France remained separated for eternity (Onnekink, 2013).

This is not a surprising outcome. The first reason is that none of the belligerent parties outmatched the other in military strength. In general the French were stronger on land, and the British and Dutch at sea. Only when the sea powers upgraded their land forces to the extent that they – together with the Austrians/Germans – outnumbered the French on the continent did the war come to a grinding halt. Exhausted parties started to look for peace in secret preliminaries. The second factor here is the mutual distrust of the allies. After the death in 1702 of William III, King of England and Lord Governor of the Republic of the United Netherlands, old rivalries between the British and Dutch over trade came to the fore again. They had always been there, and they were the source of numerous Dutch–British sea battles during the seventeenth century, but had been contained by the political framework under the House of Orange and the 'French threat'. The Dutch were afraid of a separate peace between France and England, which indeed occurred, giving the British trade concessions on Spanish continental and colonial soil. The British wanted to keep Dutch power limited in order to keep competition at a low level. Meanwhile,

the Habsburgs, having lost all of Spain, had an interest in keeping at least part of it: the Southern Netherlands (today's Belgium). The Southern Netherlands therefore shifted from Spanish to Austrian rule in 1701, while the Republic of the United Netherlands demanded a long-promised substantial barrier of fortresses in that area (Onnekink, 2013). The French then tried to keep the balance of power between the sea powers intact, in order to prevent either one becoming the hegemon of the sea – a wise policy, because after the waning of Dutch trade dominance at the start of the eighteenth century, Britain became France's main competitor until the resurrection of Germany at the end of the nineteenth century.

Pre-negotiations

Negotiations about the Spanish Succession had been ongoing since 1661, but gained momentum in November 1700 with the death of Spanish King Charles II of Habsburg and the beginning of the Spanish War of Succession in its aftermath. Talks in 1700 between the States-General (representatives of the seven sovereign united Dutch provinces) and Count d'Avaux (Tischer, 2008), the ambassador of Louis XIV in The Hague, did not work out well (Doesburg, 1886: 5) and could not prevent the war from starting. Later, while the war raged on, both sides sent peace signals. In 1705, the French made some indirect peace proposals to the Dutch, with the aim of turning around those Dutch merchants who saw the war as a threat to their commerce and trade. The proposals were very advantageous to the Dutch (Doesburg, 1886: 9–11). In reaction, the Dutch worked out a secret peace plan in 1705 to be discussed with the British, with the intention of sending it to the French if the British did not oppose these ideas. The war government in London despised the plan, however (Stork-Penning, 1958: 40–41). The Dutch initiative by Willem Buys, who was the representative of the city of Amsterdam, raised suspicion among the British: were the Dutch, and especially the merchants of the powerful port of Amsterdam, heading towards unilateral peace with the French King Louis? The British were worried as the Dutch conditions were not very favourable for England, while they were quite mild on the French.

After these failed negotiations, the French made a serious attempt to court the Dutch again in 1709, especially after the French defeat at Malplaquet at the hands of John Churchill, Duke of Marlborough, a Tory who was in line with the war politics of the Whigs. Secret French–Dutch negotiations ensued. The French seemed to be ready to accept all of the allies' demands. The French envoy Antoine Louis Rouillé bargained in secret with the Dutch representatives Buys and van der Dussen in the Dutch town of Geertruidenberg. Interesting enough, they were instructed and mandated by the Dutch Raadspensionaris (prime minister) Antonius Heinsius, but not by the States-General (supreme authority). In order to show their seriousness, the French Minister of Foreign Affairs, Colbert de Torcy, paid an incognito visit to Heinsius. Both the British and the Austrians became involved in these negotiations and, together with the French ambassador, the allies worked out a peace agreement in 40 preliminary articles (Veenendaal, 1956: 24). However, France's King Louis XIV refused to agree to article 37: to convince his grandson Philip V – if need be by force – to hand over the throne to the Habsburgs. This created turmoil in the alliance. Those who had warned the negotiators about a French ploy to use bargaining time to win time for war preparations gained strength. At the same time, British suspicions of a Dutch *Alleingang* (going it alone) gained momentum again. This round of negotiations had

started with a French–Dutch *à deux* after all. The French and Dutch went on to negotiate bilaterally in 1710, trying to find a solution for the French '*non*', but no outcome could be reached (Veenendaal, 1956). A last attempt by the French, to have an armistice for France but to continue Spain's war, was attractive to Prince Eugenius of Austria, but rejected by the British and Dutch.

In the third important preliminary negotiation, it was the turn of the British to try back-channel bargaining with the French. After the fall of Britain's Whig government of Godolphin, the Tory minister St John Bolingbroke took the initiative for secret negotiations with France. This had to do with the 'blind' trust of Heinsius in the 'paper promises' of the Whig government in London (Stork-Penning, 1946: 194–197) and the absence of a permanent representation of the Republic of the United Netherlands in London after the death of Ambassador Marinas van Vrijbergen in 1711 – a serious mistake, as the French and British made their deal in 1711 and nothing could change that anymore (Onnekink, 2005: 53). Both the Dutch and the Austrians were outraged, as their options were now severely limited. They felt betrayed by the *Perfide Albion* (perfidious England). The outcome of the French–British negotiations was very favourable to Britain, at the expense of its allies. The war continued, but now without the British. After the French victory at Denain, the Dutch gave up and joined the English in their armistice, though the Austrians did not yet yield. The German emperor continued his fight, but his general Prince Eugene of Savoy limited himself to skirmishes at the fringes. Open warfare was over. The French tactic finally worked: approach one of the allies, give them a good deal, and the war will be over, one reason being that a pact with the powerful British made more sense than an agreement with the weaker Dutch Republic. The stage for the Peace of Utrecht negotiations was set, as was the outline of the upcoming peace agreement. The conference could start, although it was only at Rastatt in 1714 that France and the Holy Roman Empire settled their differences.

Negotiations

The Congress of Utrecht attracted much attention, with people crowding into the city for amusement or profit. Utrecht's City Council introduced regulations to protect the envoys against the townspeople, ordering the citizens not:

> […] to rail against, slander or abuse, by any word or deed whatsoever, the said Lords, the Public Ministers or those of their retinue; and all transgressing was to be punished arbitrarily and corporeally, according to the exigency of the case. Provisions and agreements were made to prevent rivalries and quarrels between the pages, coachmen and domestic servants of the respective representatives, who were prohibited from carrying sticks, swords and arms of any kind. The respective Plenipotentiaries were to come to the conferences in coach, with not over two horses and in a small retinue (Gerard, 1885: 227–228).

The attending diplomats came from Great Britain, Austria, France and the Republic of the United Netherlands, as well as Hanover, Poland, Saxony, the German empire, Portugal, Prussia, the Papal States, Savoy, Sweden, the Swiss Confederation, Tuscany, Bavaria,

Venice, Geneva, Lorraine, Cologne, the Palatinate, Modena, the Protestant Swiss Cantons, and many lesser principalities. A total number of 83 plenipotentiaries arrived in Utrecht. The chief negotiators were the Marquis d'Huxelles, the Abbé Polignac and the Chevalier de Mesnager for France; the Bishop of Bristol John Robinson and the Earl of Strafford Thomas Wentworth for Britain; Buys, van der Dussen and the Count of Rechteren for the Republic of the United Netherlands; while the Count of Sinzendorf and Herr Consbruck from the German empire played a role behind the scenes (Doesburg, 1886: 99). Many other personages attended the conference, representing their own interests or those of petty potentates (Gerard, 1885: 228–229).

Protocol inside the conference hall was of even more importance than outside. In a 'total make-over' the hall had been refurbished in such a way that no delegation could even give the impression of sitting in a place where they had preference over others. At the opening session on 29 January 1712, French and British negotiators were the first to enter the conference hall. As usual for the era, they entered at the same time and same speed, saluting each other in a great show and sitting down at the table at the same moment. The others followed suit. But it was clear who would dominate the conference, and indeed nothing could be decided upon without Anglo-French consent. If there was not to be one hegemonic power in Western Europe, there were effectively two of them, pre-cooking the conference results.

The fifteen months of the Utrecht negotiations were part of an ongoing European negotiation process, with unclear beginnings and fuzzy endings: a process without a protecting regime, like in the European Union of today. Utrecht has been described as 'a useful clearing-house for the ratification of decisions arrived at by much more devious processes' (Pitt, 1970: 446). It confirmed the agreements made in London and Paris in 1711 (Frey and Frey, 1995), but not right away, as the Dutch and Austrians were not willing to accept the outcomes of the secret French–English negotiations at face value, meaning the continuation of warfare while the diplomats were negotiating (Veenendaal, 1970: 443). Until mid-March 1712, a general session between France and the allies was held twice a week at 10 o'clock in the morning. In the nine months that followed, plenary sessions were hardly held any more. Intense bilateral negotiations dominated the scene, both between delegations in Utrecht itself, and between the conference negotiators and their capitals. The meetings were rocketed by external developments, such as the death of the French *dauphin* (crown prince) and his two potential successors within a few months of each other, as well as the failing health of Queen Anne of Great Britain, thus forcing the British to speed up the negotiations. Queen Anne's Hanoverian successor, George I, was known as an enemy to France and his reign would thus have precluded any Utrecht Peace Agreement. There was so much time constraint at the end, and so much fatigue, that in the last stages French and British negotiators sometimes decided on the formulation of certain phrases by throwing a dice (Gerard, 1885: 283). Interestingly enough, Utrecht did not end with a formal signing session; the Treaties were just handed over to the Dutch secretariat of the Utrecht congress (Hamilton, 1995: 80–81). There were festivities in several countries, however. In London a service was held in St Paul's, under the tones of *cantate* by Georg Friedrich Händel that had been specifically written for the occasion of the conclusion of the Peace of Utrecht: *Utrecht Te Deum*; and *Jubileum* (Weber, 1891: 399). The informal ending of the congress stands in sharp contrast to the formalities seen

in Münster, Osnabrück, Nijmegen and Ryswick, and seems to mark the beginning of the end of congresses as general assemblies. After Utrecht, there was a 'growing tendency for congresses to break down, or to meet so sketchy a way as not to be congresses at all' (Hamilton, 1995: 80–81).

Including the Treaty of Rastatt in 1714, the 'Pacification of Utrecht' contained 23 treaties. The five main outcomes were the separate treaties between France on the one hand, and Britain, The Netherlands, Portugal, Prussia and Savoy on the other. In 1713, an additional series of treaties, which were connected to Utrecht, followed suit. Spain, which was represented by France, was absent in Utrecht, but it concluded treaties with Britain, The Netherlands and Portugal. Germany made an agreement with France and The Netherlands, and The Netherlands with Britain. Besides these outcomes, there were also minor treaties, as well as a 'Memorial of the Protestants', particularly for the relief of the Huguenots in France. However, the Protestants were not happy with the substance of this memorial, and they filed a complaint with the magistrates of Utrecht about the unwillingness of the plenipotentiaries to act as mediators between them and French King Louis XIV. The treaties mainly dealt with land issues – that is, which territory belonged to whom under which conditions – such as the secession of Gibraltar and Minorca to Britain and the creation of a barrier of Dutch fortresses in the Austrian Netherlands against future French adventures. Yet they also settled commercial and other issues, such as the right of Britain to 'supply the Spanish West Indies with negro slaves, for the space of thirty years, to the extent of 144,000 negroes, at the rate of 4,800 yearly' (Gerard, 1885: 292), or freeing Huguenots who were galley slaves in France, on the condition that they would not return to their home country. At the other end of the political spectrum, one of the Utrecht treaties brought about the international recognition of the King of Prussia.

Negotiators

The British were the most assertive negotiators. Moreover, they had a solid plan as they had to defend what they had gained in the Franco–British agreement of 1711, while the Dutch were reluctant to negotiate because of what they saw as British betrayal. Notwithstanding the fact that the Dutch had tried to come to bilateral terms with France twice before, they felt no ownership of the political frame in which the Utrecht negotiations had to evolve. Moreover, they were irritated by British opportunism during the Congress of Utrecht itself: 'St John [Bolingbroke, the Tory minister] hardly distinguished between the weapons of war and diplomacy, or between ally and enemy' (Pitt, 1970: 461). It was only at the end of the negotiations that British–Dutch relations took a turn for the better. The Dutch were not the only ones who were critical of British negotiation behaviour. Two English historians once noted that the British had forsaken the Dutch, betrayed the Catalans, while the great loss of Britain was its loss of honour (Gerard, 1885: 309–310). Others spoke of 'Tory betrayal' (Aalbers, 1977: 80); and in sketching the behaviour of British politician Robert Harley, Alastair MacLachlan notes that his approach was not geared by 'intended perfidy, but because his opportunism, his hypocrisy and his pragmatism seemed to be that to more exacting mentalities' (MacLachlan, 1969: 213). The Brits did not trust the Dutch either: 'The Dutch are our Rivals in trade, and have Cheated us' (Coombs, 1958: 376).

While the Republic of the United Netherlands had done most of the fighting, with the biggest army in the field, the British took the spoils at Utrecht, thus humiliating and finishing off the Dutch, and contributing to the decline of the republic as a world power (Geyl, 1937: 189–190; and Schutte, 1978: 276), with the main cause being the decline of Dutch trade (Israël, 1989: 374–377). Whether the British strategies and tactics were wise in the long run is another matter, as it endangered 'Anglo–Dutch friendship, the bulwark of the Protestant Succession [in England]' (Hatton, 1970: 93). This did not come as a surprise. The British and Dutch ambassadors, Strafford and Buys, had an enormous quarrel even before the negotiations started. It was clear that the Dutch had to fear their ally, not their enemy (Onnekink, 2005: 59). Interestingly enough, however, the use of threats and blackmail could have positive effects on trustworthiness as well. The Duke of Marlborough, writing to Harley in 1706, disclosed that 'Your letter to M. Buys has had its effect, for he is in extreme good humour and has really acted like an honest man to Her Majesty and England' (Stork-Penning, 1958: 63).

The French, because of their alliance with England and their final military successes as a consequence of British abstention, had increased their diplomatic strength to the extent that they were seen as arrogant by their fellow negotiators. As representatives of an absolute monarch with permanent diplomatic positions in Paris, they were less dependent on the outcomes of the negotiations than their British colleagues, whose tenure in office was only linked to the duration of the peace negotiations. They tried, by the way, to extract more concessions from their English allies at the very last moments of the Utrecht negotiations, when the text was in fact finalized, which truly irritated the British. As British diplomat/politician Bolingbroke wrote: 'They act neither fairly, nor wisely [...] they chicane with us, concerning the most essential article of our treaty' (Gerard, 1885: 280).

The Dutch were stubborn and on the whole this lack of flexibility was contra-productive (Geyl, 1937: 219). They were determined to stick to their guns. In a way they had done this for too long in the pre-negotiation phase, thereby losing the opportunity to side with the British at the end of the secret French–British preliminaries, but their inflexibility did sometimes pay off in the Utrecht negotiations. The French once attempted to bulldozer them, supported by English manoeuvres to outflank them by setting up the Prussians and the Hanoverians, but the Germans did not let the Dutch down, and the French bluff failed. The Dutch could also be arrogant at times, but when they threatened to quit the negotiations, the French called their bluff. One of the French envoys, the Abbé Polignac, spoke the famous words – still cited in Dutch history books today: *'Messieurs, Les circonstances sont changées – il faut changer de ton. Nous traiterons chez vous – de vous – et sans vous'* (Sirs, the circumstances have changed – it is necessary to change tone. We will deal with you – about you – and without you) (Gerard, 1885: 275–276). Had inflexibility really been the main reason for Dutch negotiation ineffectiveness? David Onnekink is of the opinion that internal quarrels, bad assessments and denial of sound advice were the real reasons for its failure (Onnekink, 2005: 65). Interestingly enough, these are the same factors that caused the demise of the Dutch draft for a 1991 Maastricht Treaty (Van den Bos, 2008).

Other Congresses on Dutch Soil

Comparing Utrecht to the two major peace conferences on Dutch soil after Westphalia – Nijmegen and Ryswick – is not something new. British and French diplomats studied the Nijmegen negotiations in order to be well prepared for Ryswick and Utrecht (Hatton, 1980: 3–4). Comparisons showed the same kinds of negotiation procedures, process and behaviour. Procedures were tight, and fighting for precedence was a threat to the success of the negotiation. The Utrecht conference organizers thus learned how to prevent such clashes before they could even take place. In Nijmegen, the City Council had made a rule about the traffic of diplomatic carriages in the city streets; Ryswick kept the opponents apart by building two new bridges to cross the ditch leading to the conference hall; and Utrecht, as already discussed, tried to prevent clashes between the general public and the honourable envoys. Nijmegen was the first conference after Westphalia where Catholics and Protestants could sit together (Hatton, 1980: 7). Looking at the three processes, however, one gets the impression that procedures were less important in Utrecht than in Nijmegen and Ryswick. For sure, they were there at the beginning and at the end, but during the actual negotiations they did not really play a role.

Utrecht, Ryswick and Nijmegen had their official meetings, but just like today, progress was made in the corridors. In Ryswick, the decisive step was taken completely outside the negotiations, and by the way, by diplomats of a military background. When the negotiations did not move forward, the French Marshall Boufflers and the Dutch envoy Bentinck (the Count of Portland) made the deal on which the negotiations could be finalized. This led to Boufflers' remark 'While the ambassadors wage war, the generals conclude peace' (Keens Soper, 1997a: 38).

The processes were different in the sense that in Nijmegen and Ryswick, the preliminaries were much less substantial than in Utrecht. The consequence of this was extensive wheeling and dealing with the home front, which took time and energy. These negotiations with the constituencies distorted the negotiation process at the location, resulting in loss of time and procrastination. As Utrecht was a kind of formalization of the preceding bilateral agreements, the bargaining could gain and keep momentum much more easily. This might have been one of the reasons for the relative forward-looking outlook of the Utrecht Treaties. The past was done with; the treaties had to regulate the relationships for the future. Yet there is a human dimension to this forward-looking aspect as well. At Nijmegen, French King Louis XIV was at the height of his power, having invaded the Republic of the Seven United Netherlands, having built a strong alliance with the British and Germans, and occupying the city of Utrecht and celebrating mass in its cathedral, thus threatening the Dutch heartland itself: the province of Holland and the city of Amsterdam. In Ryswick, however, Louis had a hard time against an overwhelming alliance of Britain, Spain, The Netherlands, The Holy Roman Empire and others. In Utrecht, he was back in business, but exhausted at the same time. Moreover, he had become an old man. The end of his reign was in sight and Europe was preparing for that. Utrecht was thus a more inclusive peace process and inclusiveness tends to support forward-looking aspects.

Both Nijmegen and Ryswick had mediators, trying to help to create a smooth negotiation process: in Nijmegen these were – as in Münster – papal representatives, who were only

allowed to transfer documents (Rietbergen, 1980: 44), at least officially; in Ryswick the role of mediator was with the Swedish chair (Huitsing, 1997: 16). Utrecht had to do without – at least official – neutral intermediaries. Why could those peace negotiations do without mediation? After all, the number of actors in Utrecht was far larger than in Nijmegen or Ryswick, thereby creating more complexity. The main reason for the absence of mediators was the dominance of Britain and France over the Utrecht procedures. A mediator would have been an unwanted 'stand-in-the-way'. The negotiations were already more or less decided by the last Franco–British preliminaries, meaning a quite clear-cut framework for Utrecht, and although the absence of mediators might have attributed to the rudeness of the Utrecht negotiations, it also prevented indirectness. Mediators such as the Italians in the Münster negotiations (Meerts, 2005b: 32) can also complicate matters. Direct negotiations can lead more easily to clashes, but they can also speed up the process, averting miscommunications, deliberate or not. Here we have an interesting connection between behaviour and procedure. The more brutal the behaviour, the more strict and formal procedural aspects we may find (Mastenbroek, 2002). It might have to do with something else as well: the connection between warfare and negotiation as tools in international relations. Both negotiation and warfare were seen as an art to be performed (Neveu, 1980: 242). To show off at the battlefield might help one side to win, as it could impress the opponent to such as extent that he might give up without much fighting. The same seems to be true for the bluff poker of the French in the Utrecht bargaining process and the harshness of the Dutch defence against this kind of behaviour.

The Peace of Utrecht in a Broader Perspective

In order to value the evolution of diplomatic negotiation in Western and Central Europe, we distinguish five factors influencing the process of international negotiation since the second half of the seventeenth and first half of the eighteenth centuries: the number of European states and their connectedness to each other and to the world; the rule of law and the respect for human rights; the societal–political and professional cultures; the level of popular participation in policy-making; and the level of welfare and technology.

Do we have more or fewer states in Western/Central European negotiations than three centuries ago? Are they more or less connected to each other and to the world? The numbers have not really changed. Europe had a multitude of sovereign or semi-sovereign entities at the time of Utrecht, Ryswick and Nijmegen, as we have today. The difference is in the clarity of their status. Three centuries ago the status of countries was not always clear and the question of which dynasties owned those lands was a dominant factor in negotiations. It meant that lands could easily be tossed around and traded off against other territories. Land was a commodity that could be traded. Having more trade-offs available, negotiations were more easy-going than today. Diplomats could package trade benefits and regions in the offering. During Utrecht, for example, the Italian lands were seed money to smooth the negotiation process. Trading colonies for colonies was another popular game, helping to make intra-European bargaining easier.

States were less dependent on each other, so could more easily use warfare in competition with negotiation. This diminished the value of the negotiation process as a tool in international relations compared with inter-state relations nowadays. Actually,

negotiation could be seen as a tool in warfare, while nowadays we tend to take the opposite viewpoint: warfare might be a tool in a negotiation process.

The lack of rule of law bedevilled the negotiations at the time. Procedures had to compensate for that, but could not manage. Managing an anarchical situation through a peaceful process like negotiation is a very difficult task. Negotiators were relatively helpless in this, with the effect that negotiation had a quite meaningless role in international politics at the time of the Utrecht negotiations. Diplomats and their rulers were aware of the negative effects of international lawlessness on international relations and give-and-take processes. The dilemma was a chicken-and-egg problem, however. Trust could have helped in compensating for a lack of rules and regulations, but trust itself was problematic: 'states are only willing to enter [...] negotiations when they are able to trust their opponent to stick to an agreement' (Ghosn, 2010: 1058). 'Trust is a most difficult condition to build' (Faure, 2012: 371).

Although negotiation regimes had to be created, as they were lacking, negotiation itself could not be seen as an effective methodology. Being aware of this, especially after the successful but incomplete Westphalia talks, countries tried to regulate their relations more and better through the Utrecht agreements, understanding that the quest for hegemony threatened the stability of Europe and thereby of its dynasties. There is, of course, an enormous difference in respect for human rights between now and then. On the one hand, this made negotiations smooth: people could just be traded for another 'commodity'. Yet it also meant that negotiators did not really respect each other, notwithstanding the neat manners of the diplomatic noblemen, which led to a kind of warlike negotiation process in which the important factor of trust was lacking. Moreover, the rule of law to compensate for this lack of trust was not yet around: the rule of power existed, but not much of law.

Societal, political and professional cultures were less 'civilized' than today. Brutality distorted stable and trustworthy negotiation processes. The mob could threaten the envoy, envoys' servants fought with each other on several occasions, and negotiators showed contempt to each other. None of this enhanced a fruitful atmosphere at and around the table. We have already remarked upon the Dutch angriness about Britain's secretive attitude, but have also commented that the Dutch themselves came close to a separate peace agreement with France on two occasions. They were obviously not more reliable than the British, nor the French for that matter. Nevertheless, there was a diplomatic culture, which was synonymous with the culture of nobility. There were certain norms and values and a certain etiquette to help negotiators work with each other. There was also their lingua franca – quite literally, as French was the dominant language at the conference table. Actually, many diplomats preferred to speak French among themselves, even if they were not from a *francophone* country. The Dutch diplomats, not being of noble birth, had French as their first foreign language, and had problems speaking, reading and writing English. This situation was quite normal until the middle of the twentieth century, and gave French diplomacy the advantageous position that the British (and Americans, etc.) have nowadays.

Limited popular participation in politics – other than peasant revolutions – made life easier on the negotiators, although there were remarkable differences between French absolutism on the one hand and English parliamentarism and Dutch particularism on the other. In Britain and the Republic of the United Netherlands, party elites and city council

oligarchs respectively did intervene indirectly in the Utrecht peace negotiations, while the French elite had to hide behind the back of their absolutist ruler. The problem of constituency bargaining was quite non-existent for the French delegation, as they had to obey the monarch's direct orders, while the Dutch and British situation could be described as being more multiform: negotiators had to take into account the opinions of different elite factions. Still, however, in comparison with present-day diplomatic bargaining, negotiations were seldom interrupted by political parties and parliament, let alone by public opinion. Negotiators were quite dependent on monarchs and ruling elites, who could be extremely whimsical. Negotiators also lacked a protected position *vis-à-vis* their bosses, and as we have already seen, a more permanent position could translate into a more influential one.

Nowadays diplomats can use public opinion as a tool to apply pressure on their opponents or as an excuse not to implement the agreement (Rosoux, 2003: 45–55). Not having this weapon, not being able to play divide-and-rule between different internal power centres, being in a very dependent position, and sometime fearing for their lives, the legal position of individual diplomats was much weaker than today. This then affected the process of bargaining, as their insecurity and limited mandate hardly made creative solutions to negotiation problems feasible. On the other hand, the closeness of the negotiating elite made life easier sometimes, as there was much less control of the negotiator's behaviour:

> In the eighteenth century, a member of the European nobility would have more in common with members of his own class in another country than with a different class in his own. Even when non-nobles served as representatives, they accepted the aristocratic precepts of the ambassadorial corps and perpetuated the traditions with civilité (Frey and Frey, 1999: 212).

Yet at the same time it was difficult to be effective and to have substantial outcomes if you were so dependent on your ruler, your ruler's character and his or her own private – and thereby not always state – interests. The limited room for manoeuvre and creativity stifled negotiation processes, as diplomats were extremely dependent on their sovereign's instructions. The main statement of the famous book *The Ambassador and his Functions*, by Abraham de Wicquefort (1606–1682), is that the diplomat of his time should have a wider mandate – being more autonomous – in order to be effective (Keens-Soper, 1997b).

Technology and welfare make an enormous difference for the diplomatic negotiator today and yesterday. The lack of efficient communications in the past meant a huge loss of time, creating a reservoir of misunderstandings and misinterpretations. In the meantime, the war raged on and every battle lost or won had its impact on the progress of the negotiation process. Wars were waged to get a better position at the table, leaving ample time for serious bargaining, unless parties became completely exhausted. Yet as long as they had resources, the combatants preferred weapons over words. Time was therefore, in general, not favourable to the negotiation process, especially not the summertime, as wars could then easily be fought. Negotiations came to a grinding halt, and then resumed in wintertime. As people's well-being was at a low level, wars over resources were abundant, and more wars meant more work for the negotiators and less possibilities to come to

grips with the international situation. On the other hand, the exhaustion of resources gave negotiations a chance. Negotiators, by the way, spent lots of money to show off to other negotiators, and most became indebted to local shopkeepers, who could not sue them because of diplomatic immunity.

Past and Present: The Effective Negotiator

Another angle for comparison between the past and present has been offered by Bernard Bot, former Permanent Representative at the European Union and former Minister of Foreign Affairs of the Netherlands, in a speech commemorating 300 years since the Peace of Ryswick (Bot, 1997: 51–57). Bot described the features of the effective diplomatic negotiator: (1) The negotiator should have a trusting relationship with his or her constituency. This was probably even more important in the seventeenth and eighteenth centuries than today, as ambassadors were acting in relative isolation on the basis of a direct mandate from their country's sovereign. Apart from trust between the negotiator and the home front, we have the problem of trustworthiness between the negotiators. Treacherous behaviour caused the same uproar in the past as today, but seemed to be a much more common practice than in the twenty-first century. (2) The negotiator should feel empathy for the other party's position. This seems to be more self-evident today than in the past. (3) The negotiator should know their dossier. This was important in both the past and present, with the additional remark that substance today is much more complicated in quality and quantity, requiring management skills that diplomatic negotiators of the past did not have or need. (4) The negotiator should maintain excellent networks. This is very important nowadays, even more important than in Utrecht, Ryswick and Nijmegen. Without the alternative means and sources that are provided by modern technology, personal relationships were the heart of diplomatic bargaining at the time. Paradoxically, the distributive negotiation mentality did not always help to create the understanding and trust that were needed to move forward. As we have already seen, treason was a commonly used tool, probably more than nowadays, as secrecy today is even more difficult to guarantee than yesterday. (5) The negotiator should have a good feel for the political context and the ability to see through political bluff. This is important now, and was even more important in the past, in a period when bluff and power-play were more regular features of international negotiation than in present-day life, in a much more insecure political environment. (6) The negotiator should prevent loss-of-face of his or her opponent. This was certainly much more important than in today's Europe, as face played an overriding role in European bargaining. (7) The negotiator should be a stage actor. Again, this was very important in the seventeenth and eighteenth centuries, much more so than nowadays. (8) The negotiator should have endurance, a quality really needed in today's marathon meetings in Brussels and New York, but the pace of negotiations 300 years ago was much slower and endless general sessions hardly happened. (9) The negotiator should have a good sense of timing and knowing when to give in – important then and now. The Dutch did not grab the opportunity to team up with the French and the British in the final pre-negotiation phase of the Peace of Utrecht and it cost them dearly. Dutch stubbornness is a regular feature in Dutch negotiation behaviour, including today.

(10) The negotiator should be true to him or herself and stick to their personal style. This seems to be of equal importance in both eras, then and now.

Willem Mastenbroek is of the opinion that effective negotiation can be measured within four main dimensions: interests/substance; power/influence; climate/relationships; and flexibility/exploration (Mastenbroek, 1989). Comparisons between the seventeenth-century Westphalia negotiations and those of the present, made on the basis of these four levels, indicate quite a few differences in the management of diplomatic negotiation processes in the seventeenth and twentieth centuries (Meerts, 2000: 78–84). Reframing the four paradoxes produced five conclusions concerning the similarities and disparities. More than today, negotiations at the time: (1) were a by-product of warfare; (2) tended to be more competitive; (3) seemed to be less value-added; (4) had outcomes of a more distributive and backward-looking nature, sowing some seeds for future peace and stability and some for upcoming wars and volatility; and (5) were of a bilateral more than a multilateral nature, with ambassadors having stricter mandates and a more treacherous negotiation style than today (Meerts, 2000: 85).

Differences between the past and present are numerous. As noted in chapter III, the relevance of the negotiation process has changed over time. While warfare was the preferred means in conflict resolution in the seventeenth and eighteenth centuries, a slow transformation in the direction of bargaining evolved in the nineteenth and especially the twentieth century – from negotiation as a tool in warfare to warfare as a tool in negotiation. What did not change is the interplay between the two instruments; the change is in their relative weight. This book notes the importance of technological changes and their impact on the balance between 'words and war'. Technology upgrades the instruments of negotiation and warfare, but the effects are completely different. Technology has been an impetus to more effectiveness in non-violent conflict resolution through mediation and negotiation, while technological evolution has equally created more disastrous outcomes of violent conflict resolution, thus enhancing the costs of warfare and the benefits of negotiation.

Another issue mentioned in chapter III is the evolution of – and the linkage between – regime-building and trust. As has been noted, the lack of regimes prevented actors from using organizational trust to compensate for a structural lack of trust. Trust has always been a problem, as are imperfect organizational constructions. Yet trust is more of a problem if parties cannot be contained by external factors like international organizations and substantial international law. Lack of trust also gives precedence to back-channel over front-channel bargaining. Less trust inspires less transparency, and less transparency plus less containment equals instability, for example in coalition-building. A change of coalitions – as occurred before the actual Utrecht conference as the British–Dutch (or actually Britain–Holland) coalition gave way to a British–French caucus – has much more impact in a context where regimes are lacking. These coalitions throw their weight around, but the effect can hardly be corrected if other forces are of limited significance. The self-evident and widely accepted constantly changing coalitions of today's European Union, which creates a 'natural' equilibrium between contending parties, would have been unthinkable in the past. One could therefore hardly speak of a stable international system, although the Treaty of Utrecht is a tiny step in the direction of a more stable and transparent web of international political relationships.

Chapter III of this book also stated that power is another major factor of influence in the evolution of inter-state negotiation processes. Power differences in the seventeenth and eighteenth centuries were less constrained by an international community, or by some state structures. Autocratic and plutocratic regimes dominated the scene 300 years ago; today they are balanced by polyarchic and democratic political systems in which negotiators are held responsible, through their political superiors, for their deeds towards representatives of their societies. This has an impact on their attitude and behaviour. On the one hand, negotiators are more protected in the sense that they, as professionals, have a fixed position in a bureaucratic bulwark and normally they do not fear for their lives. On the other hand, they lose flexibility. Negotiators representing dictatorships do not need to worry too much about the home front. On average, it is clear what the demands of their masters are, unless the dictator is an unpredictable ruler. The 'democratic' negotiator, meanwhile, has to struggle with the political forces and stakeholders back home. The outcome of internal negotiations is often unclear and when it finally materializes in a mandate, that instruction could be overhauled completely if elections overturn the government. The home front is therefore of more importance today than in the past. This distribution creates a more complex negotiation process, and more complexity often diminishes effectiveness.

Another difference between the past and present has to do with the role of culture. Better communication might create better understanding, but it can also enhance civilization clashes. While the negotiators of the seventeenth and eighteenth centuries were often amateurs, they did share the culture of the nobility. This created strong bonds and limited the impact of cultural divides. However, the negotiations often suffered from the vanity of the negotiators (Stücheli, 2013: 80). One could argue that today the professional diplomatic corps – with its norms and values, and rules and regulations – helps to soften cultural contradictions. This is true indeed, but we also see an influx of non-diplomatic negotiators in today's world, both from the political and the bureaucratic side, and the public and private sectors. The nature of the impact of culture on the negotiation process changed, but not in such a way that it has a more positive or negative influence on the process comparing the past and present. Limiting culture to language does not provide us with a different conclusion. After all, as English serves as the bargaining lingua franca today, French (and before that Latin) performed that role for the noble and upper-class diplomats who negotiated the treaties of Europe between Westphalia and San Francisco.

In Conclusion

The process of inter-state negotiation evolved over time, particularly in the last three centuries. This chapter has presented the Peace of Utrecht as a case study to shed light on the progress made, for example by comparing negotiation behaviour in the eighteenth and twenty-first centuries. Daring to say that the bargaining process improved, the question remains of in what respect and why. Inter-state negotiation does better today than at the time of Utrecht because of its output. Things that could then only be decided by warfare can now be solved through negotiation. In other words, the productivity of the negotiation process has risen substantially, as has the productivity

of society. Does this mean that we can be satisfied about the evolution of diplomatic negotiation and its contribution to international relations? There is a counterbalancing factor that diminishes the optimistic picture just sketched, for with the growth of interconnectedness between states, the number of conflicts grew as well. Therefore, more negotiation effectiveness is indeed needed, but it remains difficult to cope with the *mass* of problems and actors – including public opinion, parliament and lobby groups – that we face today. Life at the time of the Utrecht negotiations was less complicated and easier to handle, even with the more primitive tools of the time. The instruments at the disposal of negotiators have been refined, but the quantity of the problems has multiplied. There are more conflicts to deal with, although we have more – and more effective – negotiators available to tackle them. The characteristics of an effective negotiator in the seventeenth and eighteenth centuries were more or less the same as those of the twenty-first century diplomatic bargainer, but there are variations. Seven out of ten effectiveness traits were of different importance in the past or present.

Why did the negotiation process evolve as it did? We can think of several reasons. First, the development of regimes, international organizations, and a system of international rules and regulations embedded the negotiation process in such a way that processes became smoother and outcomes more assured (Meerts, 2006a). Second, the alternative tool in international relations – violence – became too costly to be effective under all circumstances. This made negotiation more valuable. Third, the negotiators are professionals now, not noble amateurs, and are better educated and better managed people from much broader strata of society, more rooted in the country that they are representing. It should not be forgotten that many negotiators of the seventeenth and eighteenth centuries were a kind of mercenary working for whichever monarch was in need of them. Loyalty to their ruler prevailed, but they were not embedded in an organization supporting them in being effective negotiators. Fourth, peaceful relationships and communication are much more the norm today than in the past. As we have seen, waging war was seen as the best way to create peace. Such an attitude may have been standard at the time, but today it would cause a diplomatic scandal. This evolution helps negotiation to be effective and efficient, as it is the main tool of diplomacy, the blood of the international system. Finally, fifth, negotiation became integrated into society, making it a self-evident tool to be used in cases of conflicts.

Did the Treaty of Utrecht contribute to a less conflictual era thereafter? According to Charles Doran, it did: 'From 1713 to 1740, Europe enjoyed a peace broken only by minor conflicts. This situation is generally said to have been an indication of the success of the Treaty of Utrecht' (Doran, 1971: 109).

CHAPTER VIII

The Nineteenth Century: Inclusiveness and Exclusiveness

This chapter was specifically written for this treatise in 2012, and was pre-published as Meerts (2013b).

CHAPTER VIII: THE NINETEENTH CENTURY: INCLUSIVENESS AND EXCLUSIVENESS

The nineteenth century witnessed a multitude of inter-state negotiation processes and this chapter will analyze the most outstanding: the Vienna Congress of 1814–1815. All of the concerned parties were invited to the congress, whether they were the former victims or the former allies of Napoleon. There were two reasons for inviting all of the relevant countries – irrespective of size or importance – to participate: first, for a legitimate conference and therefore a legitimate Final Act, all stakeholders had to be present; and second, if one country could be left out, why not another? Even for the Great Powers, this would be a dangerous precedent. What would the criteria be for excluding a country from the congress as a whole? This would be a political decision to be negotiated, and there was no way to do that. To exclude those who had been in the enemy's camp could not be a criterion as – apart from Britain – all of the stakeholders had been with Napoleon at a certain time. The duration of that connection was not a criterion either, although in the political process of the congress, duration did work to the detriment of some countries, such as Denmark and Saxony. What could be done, however, was to create inclusiveness and exclusiveness inside the congress itself: some negotiators were allowed to be a decision-maker, but most were kept at bay. There was neither a procedure nor a principle for this either; it was just decided by the Great Powers and the others had no choice but to allow it, notwithstanding the fact that the decisions of the Great Powers would have consequences for them: 'It is accepted wisdom that negotiations often have consequences for a broader group of actors than the parties directly involved in the talks' (Troitskiy, 2013: 10).

Important sources for this chapter are the eye-opening book *Rites of Peace* by the English/Polish academic Adam Zamoyski (Zamoyski, 2007) and the works on the Vienna negotiation processes by Christophe Dupont (Dupont, 2003; and Dupont and Audebert-Lasrochas, 2005). The Zamoyski book takes both a broad and a deep view into the Vienna negotiations and the negotiators. It is broad in the sense that it connects the Vienna Congress with its wider context – politically, psychologically, sociologically, historically and geographically. We say politically, because Zamoyski gives us an insightful analysis of the political currents and interests at the time; and psychologically, because Zamoyski shows us the capacities – both positively and negatively – of the main negotiators and the consequences for the negotiation process. He does this by going through the archives of the Austrian secret police, as Austria's Prince Metternich had spies in nearly all the embassies (although they had problems in penetrating the British and French legations), as well as in the Austrian Imperial Court. Zamoyski does so sociologically, as it tells about the mores of the time and the underlying network of mistresses – through bed and ball – who cater for an indirect and unseen back-channel of communication between

the main players; historically, because his story is deeply embedded in the developments leading up to the Vienna Congress and the events thereafter; and geographically, as *Rites of Peace* shows us the importance of understanding the geographic situation if we want to understand the countries' political interest.

Other important sources are the works by the father of modern French negotiation research, the late Christophe Dupont. It is perhaps telling for the non-linkage between historical and negotiation research that Dupont is not among the sources used by Zamoyski. Dupont focuses on the negotiation process in Vienna in a chapter (Dupont and Audebert-Lasrochas, 2005) and an article (Dupont, 2003) in publications from – or related to – the work of the PIN program. In both papers, Dupont deals with the question of coalition-building. In the book chapter, he tries to show the proximity and distance between the main negotiators as far as the main negotiation problem of Vienna is concerned: Poland/Saxony. In the journal article, he puts the Vienna Congress in the context of modern approaches to coalition-building. He distinguishes three phases in the negotiation process at Vienna. After a pre-negotiation process, the Russians, Austrians, Prussians and British managed to establish the Vienna Congress through the First Peace of Paris. In Vienna itself, the Great Powers – including France for a time – first move from unity to less cohesiveness; they then stumble in disruption; but third, they reconstitute themselves in order to determine the Final Act. In the post-negotiation process, after Vienna, their cohesion starts to disintegrate, most notably when France is excluded from the negotiations on the Second Treaty of Paris after the second downfall of Napoleon. As such, Dupont distinguishes five phases if we take the treaties of Paris into account as well. In Vienna itself, the flow from unity to loss of cohesion to reconstitution has to do with the question of Saxony, which split the coalition into a camp of three and a camp of five: Britain, France and Austria, against Prussia and Russia. This nearly led to war.

Another interesting analysis of the interrelationships of the Great Powers and their perceptions of themselves and of the other four has been made by Charles Doran (Doran, 1971). Doran asks the question: if all the powers try to dominate the others, how do you assimilate them into the circle? The answer: through trade-offs until a balance is reached with which everyone can live.

The Vienna Congress is, of course, a subject widely studied by historians and political scientists (Kissinger, 1957), but much less so by the 'newcomers' devoted to the research of international negotiation processes (Dupont, 2003), who are trying to understand the negotiation intricacies of the Vienna Congress, particularly as the classical diplomatic negotiation historians, such as François de Callières, wrote their treatises before the Vienna Congress took place.

In order to prevent too much repetition and description, this chapter attempts to take the different constituent parts of the Vienna negotiations apart. First, it deals with the question of choice and thereby of inclusion and exclusion: who will be in, and who will be out of the actual decision-making, separating the participating powers into different circles of influence? Then, the chapter will sketch the context of the negotiations and the construction of the Vienna Congress: the procedural perspectives. The chapter next turns to the main counterparts, the characteristics of the negotiators representing their countries, followed by their process of interaction under the heading 'Conversations'. After this, the chapter deals with the process of convergence of positions and interests as

a means of closure. For this, a few general politico-historical works (apart from Zamoyski and Dupont) were consulted (Albrecht-Carrié, 1970; and Luykx, 1971), as well as some specific studies (Webster, 1919; and Gruner, 1993), and others that set 'Vienna' in a larger diplomatic and security perspective (Kissinger, 1994; and Holsti, 1991). On negotiation itself, Zartman's concepts of negotiation as a choice of partners (Zartman, 2009) and the necessity of creating ripeness (Zartman, 2005) are referred to in this chapter. The conclusion of the chapter will comment upon Zartman's 'Lessons Learned from "Vienna"'.

Choice

Our main focus will be on the dilemma of inclusiveness and exclusiveness and its consequences. Negotiation can be seen as a choice of partners. In general, negotiation is defined on the basis of its content. What are the positions of the contending parties and how far are they apart, and therefore how difficult will the negotiation process be? However, we can also define negotiation on the basis of the participating actors, and – in the case of diplomatic negotiations – the countries and their representatives, their agents. From this perspective, negotiation can be defined as 'a process of identifying an appropriate partner and constructing a joint pact' (Zartman, 2009). From such a perspective, it is as much the contending counterparts around the table as the distance between their interests that will determine the flow of the process, the options for convergence and closure by means of an agreement. Leaving a party outside of the process could have grave consequences for the value and viability of the treaty, but taking the party into the negotiations could obstruct the process too much, thereby never allowing closure of the negotiation process.

The main criteria for co-opting a party into the day-to-day negotiation process of the Congress of Vienna were twofold: did the party belong to the anti-Napoleonic alliance; and was it so powerful that a peace treaty could only be implemented if that power participated fully in the central negotiation process? This principle implied that Russia, Austria, Prussia and Great Britain would be included, but that France would not. For power political reasons, France was allowed into the inner circle shortly after the bargaining process got underway, as at least three out of four Great Powers saw the benefit of it, skilfully clarified by the French plenipotentiary. Power politics dominated and the mistake of the later Paris Peace Conference of 1919 – to keep two of the main powers outside the inner circle because it had been the enemy (Germany) or was seen as a potential enemy (the Soviet Union) – was not made in Vienna. French participation did not obstruct the negotiation process and the question of 'what to do with France?' did not dominate the proceedings. On the contrary, to have an uneven number of actors on board proved to be vital for avoiding durable stalemates.

For the implementation of negotiated outcomes, it is vital to have as many relevant parties as possible in support of the final agreement. However, a successful negotiation process with more than five parties seems to be very difficult to achieve. Complexity hampers effective negotiation; the number of parties matters. One could postulate that the greater the number of parties, the richer the process, because the more choices are available, and the more opportunities, the more integrative the final outcome. This is certainly true, but to manage a very complex multilateral process is often a burden, especially if, as in the nineteenth century, rules and regulations were rather absent. The

Vienna Congress, for example, never decided on uniform procedures and, without such protection of the bargaining process, it is very difficult to move the parties in the desired direction. It was only in the twentieth century that we started to manage multilateral negotiations through rules that were embedded within international organizations. Even then, we bounce at the boundaries of negotiation. It is perhaps no coincidence that it is the Security Council of the United Nations where the main decisions can be taken, and within that Council, five countries play a decisive role – a 'pentacracy' of the victors of the Second World War, indeed, but still. We see this in 1919 in the Paris Conference, where five countries formed the nucleus of the conference, although only three really played a decisive role. Meanwhile, in 1814–1815 at the Vienna Congress, we had Austria, Russia, Prussia, Britain and France taking the lead, effectively excluding the other countries from real participation.

The exclusion of France at the beginning of the process was not in the long-term interest of – foremost – Austria and Britain. France had to be included in order to control it. After all, Austrian Prince Klemens Lothar von Metternich said that 'When Paris sneezes, Europe catches cold' (Davies, 1996: 762). Furthermore, Austria needed a counter-balance against its greatest competitor, Prussia. Britain needed to keep both Austria and Prussia in check, and therefore France had to become an integral part of the deliberations. Another reason for integrating the French enemy had to do with the unreliability of Russia on the one hand, and the need to control the Bonapartists and Republicans in France itself. It was self-evident that only France's inclusion could provide a balance of power in Europe, a balance that was needed to secure the peace wished for by the monarchies. Excluding a major power from the negotiation process – as with Germany and the Soviet Union in 1919 – would have had disastrous consequences, especially as other major powers like Spain and Poland had lost their former strength or vanished completely. Excluding the minor powers, however, was in the interest of the negotiation process and the need to reach an agreement within a certain time. The Vienna Final Act was signed nine days before Napoleon Bonaparte escaped from Elba, but the powers were not aware of this threat. His escape, on the other hand, would have been instrumental in forcing the allies to come to closure if their business had not yet been done. External threats forge internal agreement, but in the Vienna case, such a push was not necessary. The process itself managed to converge into closure.

Excluding other powers from real participation did not mean, however, that they had no influence at all. Hundreds of their representatives – and their mistresses – were also gathered in Vienna, and this closeness to the actual process gave them some kind of leeway. They were, however, dependent on the benevolence of the main negotiating parties, and sometimes literally had to beg for attention. In order to keep them busy, an enormous circus of events was established. These festivities were far more lavish than those we know about in earlier congresses like Westphalia and Utrecht, or the conferences that came after. While the costly social events kept the minor powers at bay, they also provided them with opportunities to lobby the negotiators of the five powers that were central to the process. These powers could afford to keep the middle and smaller powers at a distance, as long as they could be sure that they could control them afterwards. The decisions at Vienna would not be of value if the five powers themselves did not stick to them, nor if the secondary powers could not be forced to obey them. In order to keep the

excluded powers in check, a two-tier system was of help. One group of excluded parties was given a quasi-permanent position as consulted constituencies. Although they were not allowed into the inner circle, they were in part included on an intermittent basis. Countries like Bavaria, Württemberg, Saxony, Spain, Portugal, Naples and the Netherlands had to go along with this in order to be able to push the truly small powers – for example, the small states in Germany and Italy – in check.

Stratification of countries into 'great powers', 'middle powers' and 'small powers' helps us to get a better understanding of the functioning of the Vienna system (Holsti, 1967: 73). The trickling down of power on the basis of inclusiveness and exclusiveness could only be effective if there was a layer of middle powers who were both included and excluded: included because they were regularly consulted; and excluded because they did not have a 'permanent seat' in the negotiation process. We could label them 'involved parties'. As the middle class in a society provides stability in the social and economic sense, these countries provided the sustainability that was needed for the nineteenth century to be reasonably peaceful.

One other condition for the success of the Vienna framework was the willingness of the major powers to act 'in concert'. Like in the European Union of today, the smaller countries are needed to cement the interrelationships of Germany, France and Britain. If these three cannot agree among themselves, the Union will not be able to make any progress. At the same time, some dissent among the main powers is needed to give the auxiliary states the opportunity to influence their behaviour, and thereby the course of the Union.

Another condition for the Vienna framework was the absence of a major threat from the outside. As the United States was not yet a world player, as China and Turkey were in decline, and as Russia was included in the process, the centre – being Europe – could set the rule. Including Russia was a problem, however. This book is of the opinion that a Russia that was too close to Central Europe was seen as a threat to peace. This is why the Austrians, Prussians, British and French tried to keep the Russians out of Poland. They did not manage, however. It is fascinating to see how Russia entered the heart of Europe as a consequence of the Napoleonic defeat, was thrown out again after the Russian Revolution and the end of the First World War, came back in as a consequence of Germany's defeat in the Second World War, and threw themselves out again after the downfall of communism.

This problem of inclusiveness and exclusiveness in the European realm became less relevant as the world enlarged through imperialism and its demise. Through imperialism, Europe's potential was turned outside, therefore allowing for a more or less peaceful episode inside nineteenth-century Europe itself. It was only through the rise of nationalism that Europe fell on its own sword at the beginning of the twentieth century.

Here we have yet another condition for a peaceful Europe along the lines of the 'Holy Alliance': a common ideology, meaning the legitimacy of the ruling parties, foremost the monarchies. We therefore witness throughout the nineteenth century – most notably in 1830 and 1848 – collective attempts by the five Great Powers to subdue democratic and nationalistic uprisings, although 'liberal' Britain hesitated about the need for and the wisdom of such repressive actions. As the collective security arrangement fell apart in the middle of the nineteenth century, nationalism ran out of control and democracy started its triumphal march to power. Those who had been excluded took over, and half a

century after the *de facto* demise of the Vienna system, Europe broke down, allowing the rest of the world to rob it of its central position in the world. Europe lost its hegemony, a hegemony that was still undisputed when the victors over Napoleon sat down to negotiate in order to preclude further war, but more importantly to safeguard their own interests by peaceful means.

Context

How shall we structure post-Napoleonic Europe? This was the central question that gave rise to the Congress of Vienna in 1814–1815. An exhausted Europe needed a new order. What should the new order be and what should it be about? Or better still, to what extent will we restore the pre-revolutionary Europe, and how are we going to do this? One can go back into history a very long way in order to explain the Vienna context. For the purpose of this chapter, a brief description of the developments after the Peace of Utrecht 100 years earlier in 1713) suffices.

As discussed in chapter VII, Britain and Austria, as the winners of the Spanish War of Succession from 1701–1713, became the main beneficiaries of the Peace of Utrecht. France managed to keep most of its newly conquered territories, because of its early wartime successes, but the country was completely exhausted. French King Louis XIV had a family member on the throne of Spain, although Spain itself slowly but truly lost its role as a major player on the European scene. With the rise of Prussia and severely weakened by the Swedish invasions and its own shaky political system, Poland – the other flank power of Europe – was erased from the map at the end of the eighteenth century. Prussia, Austria and Russia swallowed its remains. However, Poland's dissolution and its consequence would be one of the main issues at the Vienna Conference of 1814–1815. In the north, Sweden had lost its position as the hegemonic power in the Baltic, giving way to the Tsarist empire. The south witnessed the expansion of the Ottoman Empire, with Turkey still being the main threat to the Christian European order for most of the century (Black, 2010: 61).

As France was heading towards bankruptcy because of its inadequate political system and its inability to modernize itself, the political scene in Europe was changing dramatically. The roots of the Vienna Congress can easily be traced to the French Revolution of 1789 and its Napoleonic aftermath, events that the congress sought to reverse. The French Revolution was not just an event upsetting the balance of power. Wars in (especially) the seventeenth and eighteenth centuries were very much rulers' attempts to acquire a dominant position on the continent, while other rulers sought to prevent this. In other words, many wars were dynastic wars, although they often wore the mask of religion to rationalize the war effort. The French Revolution and the Napoleonic Empire added a new, more political, rationalization to the struggle for the balance of power: the overthrow of the crowned heads who ruled the continent. Revolution juxtaposed the 'will of the people' as equal, or even superior, to the legitimate powers outside the revolutionary areas. Napoleon sought to dominate the old elites with his own newcomers to the scene: himself; his family; and some of his marshals (Black, 2010: 138–149).

Revolution and Bonapartism did not disappear after the victory of the European Restoration. There were problems in getting rid of the idea of the 'sovereignty of the

people' in many of the 'liberated' countries where these ideas had taken root. As far as Napoleon is concerned, he had been beaten in the second battle of Leipzig in October 1813 and also at Waterloo in June 1815 (during the last few days of the Congress of Vienna's procedures), but he remained the nightmare of the negotiators and their negotiations. After all, apart from Britain, all of the victorious allies had at one time or another been his allies. This implanted mistrust among the allies, haunting the negotiations from the very start until the end. Moreover, in the period between Leipzig and Waterloo, Napoleon had not been thrown out of Europe completely, but was still sitting on the island of Elba and was still a potential ally for some of the powers, which mistrusted their newly acquired coalition partners. Europe was still in flux and every potential player still counted. As for the British, such flux seemed to be to their advantage, as long as it did not culminate in one of the parties obtaining too dominant a position and threatening to upset the power balance, thereby creating a new threat to the British Empire in waiting (Black, 2010: 138–149).

Napoleon's retreat from Russia in November and December 1812 marked the beginning of the end of French dominance over Europe. While Emperor Napoleon returned to Paris, Prussian General Yorck negotiated a truce with the Russians at Tauroggen, thereby removing Prussia as a stumbling block for France's most dangerous adversary. It is interesting to note that this move by part of the Prussian military was not legitimized by Prussian King Frederick William III, who still felt loyalty to his ally Napoleon, notwithstanding the fact that he himself had been Napoleon's enemy and forced into an alliance with France. From a political point of view, the Prussian king still feared Napoleon and was not too sure about the future course of events, but on 28 February 1813, he signed the Treaty of Kalisz with Russian Tsar Alexander I. At a later stage, this alliance of Prussia and Russia against Napoleon proved to be the nucleus of a coalition with Austria and Britain, joined by Sweden. As a consequence of this alliance, the Prussians had to give up a big part of their Polish possessions, a problem that would bedevil the Vienna talks, as the Prussians wanted to be compensated with Saxony, an ally of Napoleon. To the Austrians, such an exchange would be difficult to swallow as it would bring both Prussia and Russia closer to their country, so that Austria would then have to compete with Prussia for dominance in Germany, while Russia would become a competitor in East–Central Europe. Both Saxony and Poland would later prove to be major diplomatic issues (Zamoyski, 2007: 195–196).

Frederick William III, King of Prussia, proved to be quite right in his doubts concerning the waning of Napoleon's strength, for the emperor defeated the Prussians twice, in Lützen and Bautzen in May 1813. The Austrians, still neutral at the time, mediated the armistice of Pläswitz, followed by a less neutral stand when Austrian Foreign Minister Metternich concluded the Treaty of Reichenbach with Russian Tsar Alexander I on 24 June 1813. Austria, which was technically still a French ally, decided to open negotiations with Napoleon. Metternich wanted to keep his options open, being wary to take sides while the overall situation remained unclear. He met Napoleon on 26 June 1813 at Dresden and on 10 July 1813 in Prague, resulting in Napoleon's acceptance of Austria as a mediator, as well as of a suspension of hostilities between Prussia and France. Meanwhile, the British commander Wellington defeated the French in Spain at the Battle of Vitoria in June 1813, thereby threatening the southern border of France itself. For Napoleon, the odds seemed

to change in his disadvantage in August 1813, when he lost the battles of Grossbeeren, Katzbach and Kulm in Germany, although he was the winner at the Battle of Dresden. The Napoleonic Army's strength was severely undermined by the loss of Napoleon's most experienced soldiers during the Russian campaign. Although he managed to raise new armies of numerous soldiers, these men did not have the stamina to fight as successfully as their predecessors. At the same time, Napoleon had to watch his back in France, where monarchist and old revolutionaries became restless. The same happened in subdued countries like the Netherlands, where people resisted French conscription and economic exploitation (Schama, 1977: 611–645).

In October 1813 Napoleon won the first Battle of Leipzig, but lost the second in the 'battle of the nations' against the combined armies of Russia, Prussia and Austria, strengthened with German and Italian deserters from the French ranks. Napoleon thereafter retreated into France itself, while the allied monarchs and their diplomats met at Frankfurt to discuss the follow-up to the campaign. On behalf of the gathering, Metternich launched the Frankfurt Proposals (Zamoyski, 2007: 126–128), which would allow Napoleon to rule France within its natural borders. It should be noted that the allies were still quite forthcoming, as the 'natural boundaries' of France would allow the Napoleonic Empire to keep the left bank of the Rhineland, which was roughly the Rhineland occupied by the French after the First World War. After some hesitation from the French side, new French Foreign Minister Armand Caulaincourt accepted the terms set at Frankfurt on 5 December 1813, but he did not receive an allied answer to this compliance because of British opposition to the Frankfurt Proposals.

In January 1814, the British Foreign Secretary Lord Castlereagh – the British had been facilitating the anti-Napoleonic alliance with money from the very start – met Austria's Chancellor Metternich in Basle. They discussed the succession of Napoleon, highlighting that the Frankfurt Proposal had lost their momentum. They agreed on some major issues, notably the British demand to exclude the question of maritime rights from the overall negotiations to be held in Vienna. Apart from a 'just equilibrium' on the continent, the British saw their freedom at sea as their second most important priority, if not the first. They did not want any intervention on their freedom at sea, as this would undermine their attempts to enlarge and strengthen their colonial empire. The day after their bilateral meeting, they travelled to France to meet Tsar Alexander at Langres. On 23 January 1814, the Austrians and Russians proclaimed a 'General Alliance'. They called for a congress in Vienna and the restoration of the Bourbon monarchy in France. As a consequence, the war inflamed again and several battles were fought in eastern and south-western France. On 5 February 1814, the allies met at Châtillon in France (Zamoyski, 2007: 156–160), whose conference was only dissolved on 19 March 1814 after the allied offensive against Napoleon was finally successful.

On 9 March 1814 the allies signed the Treaty of Chaumont (Zamoyski, 2007: 166–168), which was published on 31 March when the allies entered and occupied Paris. In this treaty, the allies labelled themselves the 'Grand Alliance', also named the 'Quadruple Alliance', and the nucleus of the 'Holy Alliance' was proposed by Tsar Alexander one year later and signed by most continental powers, surviving for another twenty years. Chaumont was the first treaty in history that ruled that the parties had to act in the interest of peace in general. In Paris, the French negotiator and Foreign Minister to Vienna,

Charles-Maurice de Talleyrand Périgord, re-entered the stage. As mentioned earlier in this book, Talleyrand had been politically active during the *Ancien Régime*, the Revolution and the Empire – as Foreign Minister of Napoleon – and seized his chance by installing a provisional government in Paris. He was supported by the allies and, on 2 April 1814, the Senate voted to force the abdication of Napoleon. On 6 April 1814, the Senate adopted a constitution and offered Louis XVIII de Bourbon the throne of France. On 11 April 1814, the allies offered Napoleon the Treaty of Fontainebleau, in which he accepted Elba as his fiefdom. Napoleon ratified the treaty the following day, after a failed attempt to kill himself. After a fortnight, British Foreign Secretary Castlereagh signed parts of the treaty, signalling British hesitance about some of its provisions. On 9 May 1814, Russia, Prussia, Austria and Britain established a conference between them, where they negotiated on a proposal by Prussia's Chancellor Hardenberg concerning the division of Europe, the overseas territories, the question of reparations by the French and the restitution of stolen objects. However, they could not reach an overall agreement and they decided to sign a peace treaty with France before tackling the issues to be resolved among themselves.

On 30 May 1814, the first Peace of Paris (Zamoyski, 2007: 197–203) came into being. In June 1814, the allies decided that with regard to the unresolved territorial questions, no military action should be taken. It is interesting to note here that, with the sidelining of Napoleon, there was a growing risk of an inter-allied war. This risk only disappeared when Napoleon escaped from Elba in 1815, an event that finally pushed the allies to finalize their proceedings in view of a common enemy. Napoleon's return would then be the stalemate breaker, creating the ripeness that was needed to strike a deal. In summer 1814, however, four issues seemed to be unsolvable: the Rhineland, Poland, Saxony and the fortress city of Mainz. These problems were aggravated by the position of Tsar Alexander on Poland, when he visited London in summer 1814, which opened the option of an Austrian–French alliance, although in the end this threat to the alliance's cohesion was averted in a London meeting of sovereigns, their ministers and their ambassadors. They decided on a date and a temporary agenda for the Vienna conference. However, the Russian stand also raised the possibility of a Russian–French rapprochement, which did not materialize thanks to strong pressure from Britain's Castlereagh on Talleyrand in Paris on 8 August 1814. From July until September 1814, the heads of state, ministers and ambassadors trickled into Vienna, and on 1 November 1814 the Congress of Vienna started, although the British had proposed 15 August and the Russian Tsar had opted for 1 October. The Congress of Vienna was about to begin: 'the last, and temporarily successful attempt at [the] preservation [of the *Ancien Régime*]' (Hroch, 1993: 43). Although the road to Vienna was long, most delegates were not prepared for it.

Counterparts

The Russians were personified by Tsar Alexander I (Rey, 2012), an autocratic, imperious, generous, bullying and spiritual ruler, who thought of himself as an enlightened man whose destiny it was to bring prosperity and stability to Europe. As years went by, Alexander I became more spiritual, influenced by Baroness Julie von Krüdener (Rey, 2012: 491–492), and this made him even more inaccessible to his colleague negotiators than before. He saw himself as the liberator of the European continent, and in a way he was precisely that,

although he had been Napoleon's ally for quite some time. He both admired and despised Napoleon.

It was difficult to negotiate with Alexander. Negotiations very much depended on his mood. Although he could easily be influenced, it was hard to steer him in the desired direction of a compromise. He had been educated in an enlightened way, but he had to rule over a feudal, theocratic country. In essence he lacked self-confidence, but compensated for this by acting in public in an overly confident way. In his private life, especially with the many ladies with whom he had liaisons, he could be very open and vulnerable. He was in need of attention and wanted to please others, while he could be rude one moment later, for example to the Tsarina, with whom he had a lukewarm and complicated relationship. In other words, Tsar Alexander I was not too predictable and, as predictability is an essential element of a stable negotiation process, this created problems in his dealings with the other negotiators. Although the Tsar had enlightened ideas, in the end he never brought them to materialization, and the weight of the Russian Empire in Europe and on the peace negotiations was a hot potato for his counterparts, especially for the representatives of smaller states.

Alexander's entourage included the Polish Prince Adam Czartoryski, the most skilful Russian negotiator. Depending on the Tsar's mood, Prince Czartoryski could be very influential, using his influence to get the Tsar to agree to as much Polish autonomy as possible, if not independence. Czartoryski's relationship with Alexander was a complicated one, partly because he was in love with the Tsarina, and as time went by, the relationship between the prince and his master deteriorated. Another important advisor, and at a later stage minister and negotiator, was the Prussian patriot Karl Heinrich vom Stein, who had been born in Nassau and who fell out of favour with the Prussian king as he hated the French, while Prussia's Frederick William III was of the opinion that an alliance with Napoleon would be beneficial for Prussia. While Tsar Alexander and his advisers tended to look at Turkey as the future prey of Russia, Stein sought to change their course in the direction of German confederation, which he hoped to unite after the Russians had freed it from French dominance and occupation. Both Czartoryski and Stein failed to convince the Tsar to create a unified Poland and Germany, as Alexander I did not see this to be in Russia's national interest. Stein, however, laid the foundation of German unification by restructuring Prussia. The same is true for the Ionian diplomat in Russia's service, Count Ioannis Capodistrias, who pleaded for Greek independence, did not get it, but laid the foundations for the Greek state that emerged fifteen years later, with himself as the first president. Furthermore, Count Charles Nesselrode played his – quite passive – part in the negotiation process as Russia's acting foreign minister, at the time in competition with his predecessor Prince Nikolay Petrovich Rumiantsev (Rey, 2012: 67).

Count von Metternich (Sandeman, 2006), who was Austria's Foreign Minister for 39 years, was the nucleus of the Vienna Congress. His wait-and-see policy after Napoleon's retreat from Moscow gave him the role of mediator, which he skilfully exploited. When he finally took sides, he managed to convince the allies to have the peace negotiations in the Austrian capital, giving him the opportunity to play a home match. One of the advantages of this was the opportunity to build an Austrian spy network, which was extremely successful in giving Metternich an information advantage. His spies were active – for example, as servants – in nearly all the foreign residences, including the Austrian court

itself. Metternich spied on his own emperor and empress. The only embassies that were difficult to penetrate were the British and the French. One of his disadvantageous character traits was his extremely high self-esteem. This blinded him in many instances, with so-called 'egotiation' – a negotiation process in which his ego gained priority over the interests of country and of the Congress – as a consequence.

As a counter-revolutionary, Metternich believed in the restoration of the old order. In that sense he was much more conservative, or actually reactionary, than Tsar Alexander I, who was Metternich's headache. Metternich managed to implement his plans, which were not to the liking of the British, who feared unrest among the European populations, and rightly so. The people had sniffed freedom and political influence, of which they were again deprived. Metternich's backward-looking policies resulted in resistance against the new old order, notably in the revolutions of 1830 and 1848. They also facilitated the return of Napoleon in 1815, and perhaps even the rise of nationalism that brought Austria to its knees in 1918. For the moment, however, Austria came out of the Napoleonic Wars as Europe's power balancer, while remaining a vulnerable state because of its nationality problem.

Like all of the other negotiators in Vienna, crowned heads such as Russian Tsar Alexander I or Frederick VI of Denmark, and noblemen like the brilliant French negotiator Talleyrand and the Prussian envoy Wilhelm von Humboldt, Metternich had mistresses, of whom Wilhelmina of Sagan has been the most influential. He was in love with her and their tempestuous relationship distracted him from the affairs of state at crucial moments. Another mistress was Princess Catharine Bagration, with whom he had a child and who had been the Russian Tsar's mistress as well. Metternich's friend, Friedrich von Gentz, became Secretary of the Vienna Congress, which gave him – and thereby Metternich – the advantage of setting the agenda, reporting and drafting. Metternich managed a good relationship with his nominal superior, Emperor Francis I of Austria. Although Metternich staged many performances to entertain the Congress participants, with one reason being that it kept them busy and distracted them from the ongoing negotiations, Emperor Francis I did not fancy this ongoing and very costly circus. He actually threatened to abdicate if these feasts continued. After Austria's defeat against France in 1809, Emperor Francis had to give his daughter Marie-Louise as the Empress of France and Napoleon's wife in 1810, which hampered his freedom of action *vis-à-vis* his 'ally' and enemy Napoleon Bonaparte. Emperor Francis was a conservative man and suspicious of change, but loved by his people (Zamoyski, 2007: 313). This made it difficult for Metternich to manage him if change was needed, but which made life easier as he did not intervene in day-to-day processes.

The Prussian Chancellor, Baron (later Prince) August von Hardenberg, was the Prussian chief negotiator. Born in Hanover, he had therefore been in the service of George III, King of England and Elector of Hanover. He had to leave England, however, when his wife started an affair with the Prince of Wales that became public. Hardenberg became Prussia's foreign minister and later its chancellor. He had to struggle with the Prussian military – which even mutinied against its political authorities and demanded a high price for Prussia's switch from France to Russia, a price for which the negotiations did not allow. Although Hardenberg did everything that he could to defend Prussia's interest, he was not seen as a very successful negotiator. His 'take-it-or-leave-it' demands on Saxony

as compensation for Polish lands nearly wrecked the Vienna Conference. Wilhelm von Humboldt, a Prussian academic and ambassador to Vienna, was Hardenberg's 'aide-de-camp'. After Hardenberg's death, he tried to gain the position of Chancellor, but the King did not grant it to him (Zamoyski, 2007: 536).

King Frederick William III of Prussia came with his sons to Vienna, where he played a more active role than Emperor Francis, but much less so than the Russian Tsar, who was his own chief negotiator, the only crowned head in the inner circle of day-to-day negotiation. After being forced to ally with Napoleon, King Frederick William III changed camps after his retreat from Moscow, although not immediately, and became a very loyal ally of the Russian Tsar. As Russian troops had occupied Prussia, he had no other choice, but it did bring him into a difficult negotiation situation and reduced his alternatives and his flexibility to zero. He was in fact a vassal of Russia until the end of the Congress of Vienna. Like Tsar Alexander, he turned away from liberalism as time went by, and by the end of his life he was a true reactionary. Apart from being enslaved by the Russian Tsar, he was – during the Vienna Congress – also enslaved by Countess Julie Zichy. The Austrians saw him as their main threat to Austria's interests, because both Prussia and Austria were competing for dominance in Germany.

The British had been out of tune with continental Europe for a long time, and it took some trouble for them to become accustomed to the continental ways of life, including fashion. British Foreign Secretary Lord Castlereagh headed the British delegation. Viscount Robert Stuart Castlereagh, later Second Marquess of Londonderry, was a figure with revolutionary ideas in his early years, and briefly an Irish patriot. He was seen as an honest man forced into dishonest proceedings. While Castlereagh saw Russia as a natural ally, Tsar Alexander I regarded Britain as his rival because of its maritime power and interests in the Mediterranean and Asia. Castlereagh tried to be a mediator, but he was fully drawn into the give-and-take of the Vienna Congress, including so-called 'soul trading': decisions taken about nations and minorities without consulting them. Souls were considered important, as their number was directly linked to the potential army that a country could field if needed. As Castlereagh had to deal with politics in Britain, at the beginning of 1815 he was briefly replaced as chief negotiator by Arthur Wellesley, Duke of Wellington, who then had to leave the negotiation table when Napoleon fled from Elba, before returning to Vienna after his victory at Waterloo in June 1815. The Duke of Wellington had an Irish background like Castlereagh, and – having been educated in France – had a good understanding of the French and their culture, which he liked, even after his battles against Napoleon. He warned the allies to distrust Napoleon, not the French people, and he fiercely objected to grave punishment of France, which would raise grief and endanger a peaceful Europe in the future. He was the British ambassador to France (Zamoyski, 2007: 347) when he had to replace Castlereagh in Vienna in early 1815.

Other British negotiators were as capable as their masters. George Gordon, Earl of Aberdeen, was only 28 years old and was the British ambassador to Vienna. Unlike many other British diplomats, Gordon realized how far the British government had been driven apart from mainstream European politics during the two decades of French upheaval and conquest. Like the other British participants in and around the Vienna Congress, he did not like the political intrigue that was so characteristic of the Vienna negotiations. Sir Charles Steward was the British ambassador to the Prussian court. He was a

soldier by origin and had served under the Duke of Wellington in Spain. His escapades in Vienna partly undid the image of the British as being of reasonably impeccable behaviour. As the British had their own servants in their embassy, Metternich's police could not report much on them, apart from when some of them went outside to the whores. General Charles Murray, Earl of Cathcart, was also a soldier and represented the British at the Russian court. In Vienna, Murray suffered from the continental ways of political and diplomatic horse-trading, which he had in common with the other British negotiators. His signature is under the Final Act of the Vienna Congress. Finally, there was Richard Trench, Earl of Clancarty, who was the British ambassador to The Hague. All of the British negotiators, and Castlereagh above all, had to take into consideration the position and opinion of the British Prime Minister in London, Robert Banks Jenkinson, Earl of Liverpool, whose cabinet was heavily criticized by the British Parliament and – after the Battle of Waterloo – by the British population, which wanted harsh measures to be taken against France. Britain's Prince Regent, the future King George IV, did not play a role of significance, primarily because of the parliamentary system that was in place in Britain.

France was only invited into the inner circle of negotiations after the discussion was well under way. Charles-Maurice de Talleyrand-Périgord (Bernard, 1973), France's chief negotiator and minister of foreign affairs, had survived at least four regime changes in France and was still to survive another two. Some of the *coups d état* had been engineered by him; in others he had participated as a conspirator. Once a bishop of the Roman Catholic Church, although he had never preached (his family had bought the job to generate income for him, as they saw their limping son as incapable of earning a decent living), he developed to become a Machiavellian politician of the highest grade. Talleyrand's aim was to save as much for France as he could – and as far as money is concerned for his own pockets as well – and he managed to maintain French territory after the Congress of Vienna as it had been before the Revolution, even a bit bigger. His farsightedness was combined with extreme pragmatism, his eloquence was merged with a creative mind, and his opportunism was coupled with a seemingly French legalistic approach, making him an example for diplomats even today. Nobody, however, is perfect, and his secret alliance with Austria and Britain nearly wrecked the Congress, which would have been to the detriment of France in the longer run.

Nevertheless, Talleyrand's skill as a negotiator made him an enigma in the history of diplomatic negotiation. An example of his outstanding abilities is the way he managed the very difficult and important factor of trust. 'Talleyrand [...] was not even trusted by his own constituents and even less by the king he was representing. However, in that case, he had outstanding technical skills and could show enough credibility in the arguments he used' (Faure, 2012: 371).

Talleyrand, like Metternich and most other negotiators, had love affairs, such as with the Duchess of Courland and, during the Congress, with her daughter Dorothée, Comtesse de Périgord, but these liaisons did not distract him from the negotiation process. Dorothée helped him, one of the few unmarried man at the Congress, to stage his social life. His table became famous as he took the best cook in Paris, Carème, with him to Vienna (Bobot, 2008). Everyone wanted to attend his dinners, giving Talleyrand the best channels of influence that he could want. The French chief negotiator had several noblemen to assist him: an expert on German questions, the Duc de Dalberg; the Comte de la Tour du

Pin; and the Comte Alexis de Noaille. Finally we should mention Jean-Baptiste de Gouey, (later) Comte de la Besnardière, the French diplomat who worked with the Austrian diplomat Friedrich von Gentz to draft the final versions of the Final Act.

Another Frenchman, the Crown Prince of Sweden and Napoleon's former Marshal, Jean-Baptiste Bernadotte, had to act from the outer circle, together with the monarchs of the other middle-ranking states. His ambassador at the conference was Count Charles Axel Löwenhielm. Bernadotte opted to be the successor of Napoleon on the French throne, and for a very long time he had the staunch support of Tsar Alexander. However, Metternich and others wanted the Bourbons to be restored to the French throne, as they gave precedence to the principle of the legitimacy of the dynasties, for if they had not done so, other dynasties would also be in trouble in claiming dynastic rights to a country. In the end, Bernadotte had to give in, surrendered Finland to Russia – which Russia had already occupied – and received an unwilling Norway in return, to the detriment of Denmark, which had been an ally of Napoleon until the bitter end. Denmark's King Frederick IV had the respect of the Congress of Vienna, contrary to Bernadotte, who was generally despised. However, this esteem did not help the Danish king, who was in a hopeless position, as he did not have the opportunity to leave the Napoleonic camp on time. Although the Congress of Vienna assured him of at least his own Danish territory and German Schleswig-Holstein, it took him until close to the end of the conference to get Russia's Tsar Alexander to sign the Treaty of Kiel. Only after Frederick directly confronted the Tsar with his failure to sign, did the Tsar fulfil his obligation (Zamoyski, 2007: 388).

Of the many German monarchs and princes, and representatives of smaller states with noblemen as rulers, a few stand out. Although they were also in the outer circle, they could exert some ad-hoc pressure on the five main negotiators. King Maximilian I of Bavaria saw Prussia as his main adversary. He had married his daughter to Prince Eugène, Viceroy of Italy, who had to beg the Congress of Vienna for a fiefdom during its entire duration. King Maximilian had been the first of the German monarchs to join the alliance against Napoleon and he wanted to be rewarded for it. His claim to Mainz had been one of the thorns in the side of the conference. King Frederick I of Württemberg used the Congress of Vienna to eat and drink as much as possible. His son, the Prince Royal, future King William of Württemberg, saw the Vienna event as a chance to enjoy himself as well, although he prioritized women and dancing. Perhaps the biggest victim among those who were present at the conference was King Frederick Augustus of Saxony. Like the King of Denmark, he had supported Napoleon from the start, being afraid of Prussia and Austria at the same time. The Tsar was so angry at him that he wanted to go against the principle of legitimacy by wiping him off his throne. In the end this did not happen, but Frederick Augustus and Saxony only survived because of Austria's fear of Saxony becoming part of Prussia, thus strengthening Prussia too much. However, as the Tsar wanted big chunks of Polish Prussia, Frederick Augustus had to cede the northern half of Saxony to his colleague in Berlin. Hardenberg and Humboldt demanded the whole of Saxony for a long time, and this became one of the conference's seemingly intractable issues.

Finally, we should mention some negotiators of minor powers and minorities at the Congress of Vienna, although by no means a complete listing. These included Cardinal Ercole Consalvi, the Pope's envoy; Joaquim Lobo da Silveira and António de Saldanha da

Gama, Count of Porto Santo, representing Portugal; and Spain's envoy Don Pedro Gomez Havela, Marqués de Labrador, who wanted to restore as many Italian fiefdoms to Spain as possible. From the Kingdom of Sardinia came the Marchese di San Marzano and Count Rossi. The Marchese de Brignole-Sale represented the Republic of Genoa, but Genoa disappeared from the map as an independent country. There were representatives of minorities, such as Jewish leaders from Bremen, Frankfurt, Hamburg, Prague and Lübeck, who pleaded for equality rights for the German Jews. As Metternich did not want to have the Jewish demands on the agenda, he ordered the police to expel them from Vienna. The Prussians and British supported the Jews, however, so they were allowed to stay, one reason (and perhaps the main reason) being the loans provided by the Jews to the rulers in their fight against Napoleon, for example from the British Rothschilds (Zamoyski, 2007: 379).

Structure

Communications in Vienna were facilitated by the use of French – the language of the 'enemy' – as the lingua franca, but of course a common language did not lead to common ground. From a procedural point of view, the Vienna negotiations were quite messy. This had to do with the structure–content dilemma. The structure of the conference would, of course, have a large impact on the way in which the parties were going to deal with the content. A well-regulated Congress of Vienna, with clear procedures and an opportunity for all to participate and to vote on the Final Act, would give the small and middle powers a very strong finger in the pie. Even then, however, they would have to reckon with the Great Powers, as is the case in the European Union. Although all EU member states are reasonably equal and although they all have a say, they cannot act if there are not at least two of the Great Powers in agreement with each other. Indeed, the power of the countries is, to a certain extent, reflected in the votes that they can cast in the Council of Ministers, but the very small and small states have, relatively speaking, more votes for fewer people. Even then, there is political reality, and the EU has clearly been structured around Germany, France and the United Kingdom, with Italy, Spain and Poland as a second circle. Also in the EU, we see a certain measure of inclusiveness and exclusiveness, but this is very much in the more informal negotiations – the bilateral, trilateral and back-channel, etc. Officially, nobody can be excluded, but countries can be out-voted.

A voting system would have been out of the question in the seventeenth, eighteenth and nineteenth centuries. It only became feasible in the twentieth century with the League of Nations. At the Congress of Vienna it was completely out of the question to limit sovereignty in any way, as this would undermine the system of formally independent states and the legitimacy of their rulers. Such a precedent would not only touch upon the small powers, which did not want to be vassals – although many of them were – but would also affect the Great Powers. After all, being a Great Power today does not guarantee your status for the future. The Polish example is a gloomy one, as it was once a Great Power that was completely eradicated, although the so-called 'Polish Question' was alive and kicking. Perhaps the fading of the Holy Roman Empire – actually Rome itself – could be seen as a warning to those who thought that great kingdoms would be there for eternity. It is telling that the downfall of the western and the eastern Roman Empires has never been

completely accepted. They linger on spiritually today as the Roman and Greek Catholic Churches. It is difficult even nowadays to imagine that vested powers might crumble, and the shock and the after-shocks of the relatively recent downfall of the Soviet Union and even of Yugoslavia have still not been fully digested today (Davies, 2011).

One of the signals for the compensation dilemma was Prussia's struggle, mentioned earlier, to have as many 'souls' within its border as possible. One could image a system of weighing these souls – for example, is a Polish farmer more or less worthy than a Saxon? – and indeed, a statistical committee was established to try to refine the system of population counting (Dupont *et al.*, 2005: 42). Yet without universally accepted norms, such a methodology could not work. Norms could not be universally adopted, because the Congress of Vienna did not have a procedure to allow for that. A universal system would endanger absolute sovereignty, as the Great Powers (especially) would be limited by it, and they, of course, wanted to keep their hands free, just as they still want today, although they are now much more fenced in than before. Only a system of exclusion could therefore work. The Great Powers decided over the middle and smaller ones, who were given influence but no powers. The Great Powers were equal among themselves, and in that sense there was already a veto system at the Congress of Vienna. Consensus among the 'Big Five' was needed, as it is needed today in the Security Council of the United Nations.

How did the Congress of Vienna tackle the problem of its own structure and what did it structure? In late August 1814, more than two months before the official opening of the conference, the representatives of the four main allied powers – the Quadruple Alliance – met in Vienna: in the first meeting, this was Metternich, Hardenberg, Nesselrode and Castlereagh. They decided on an 'Inner Circle' consisting of themselves, and several 'Outer Circles' with a growing number of counterparts. The Inner Circle of Austria, Prussia, Russia and Britain would also be present in the other circles. In the first Outer Circle, France and Spain were added as Great Powers. As time went by, France – thanks to Talleyrand's skills – would move to the Inner Circle, but Spain would ever reach there. As well as the Four and the Six, a 'Circle of the Eight' was created, adding Sweden and Portugal to the others. With that last Circle, all signatories of the first Peace of Paris, the treaty that laid the foundation for the Vienna Congress, were brought together in an institutional, although politically more or less irrelevant, setting. The more participants that the Circle had, the less important the issues with which they were going to deal. However, it was the Eight that were formally entitled to direct the conference, as they were the participants in the constituent first Peace of Paris treaty – the second treaty (Dupont *et al.*, 2005: 70) was signed after Napoleon had been defeated at Waterloo.

In a meeting on 20 September 1814, Talleyrand questioned the authority of the Inner Circle of the Four to decide on questions that would involve the sovereignty of other nations. His argument touched upon the principle of legitimacy, and as this principle was the foundation of the whole exercise, the other powers could not neglect his reasoning. To Talleyrand, territorial issues could only be decided upon by the Congress of Vienna as a whole. His tactics delayed the official opening of the Congress and brought him into the Inner Circle on 9 January 1815, which was then referred to as the Five instead of the Four. It should be added that there were power-political reasons for the original Four to incorporate France. The British were of the opinion that a stable Europe would not be

possible without France; the Austrians needed France as a counterweight to Prussia; and the Russians could not do without France because of its maritime power to balance the British as much as possible, and also because France could become valuable to counterbalance Prussia or Austria in the future. Only the Prussians were against France being included, but they could not sustain their resistance for more than a few months. As soon as Talleyrand was on board, he dropped his wish to deal with territorial issues in the Congress of Vienna as a whole. None of the original Four regretted his opportunism on the issue.

As discussed earlier in this book, the three conference circles conferred on different topics: the most important ones were dealt with by the Four; the next of importance by the Six; and the leftovers by the Eight. The rest of the Congress of Vienna only participated on the issues where they were stakeholders, and this was done in committees, as will be discussed later in this chapter. What was the content with which the circles were dealing? The Four, and after four months the Five, negotiated the position of France, Poland and Saxony. As already mentioned, Poland and Saxony were connected questions that had to be solved in a package deal, and the trade-off was done just before Napoleon came back on the stage. The Four initially decided on procedures, but after the main procedure were established, it was the Eight that formally decided on them. Furthermore, the Eight dealt with the question of what should be done with Italy, Switzerland and Germany. Yet there were separate meetings of the Four/Five on Germany and Switzerland as well. Actually, the Five pre-negotiated all the main issues in informal bilaterals as well. For example, the issues of Spain and France were negotiated in a mainly bilateral fashion (Dupont *et al.*, 2005: 46–47).

However chaotic and ambiguous the rules of procedure were, and even if one could talk about official rules of procedure, they were a novelty to conference diplomacy in the sense that they established a structure consisting of circles and committees. The committees were meant to get all of the relevant countries involved, both for reasons of principle and practice. With the creation of the committees, those powers that could not participate in the core negotiations could be given some kind of legitimate place in the conference processes, which avoided – also through the adoption of France – further complaints about the hegemony of the Inner Circle.

The committees had specific tasks, dealing with specific issues. The following committees were installed: on Germany; Switzerland; Tuscany; Sardinia; Genoa; Bouillon (on the border between France and the Austrian Netherlands, now Belgium); on international rivers; the slave trade; statistics; diplomatic precedence; and, finally, on drafting the Final Act. The German Committee can be seen as the most important, most tricky and most emotional, as kings, princes, dukes, counts, barons and other noblemen depended on this committee for their survival, and on the question of how they would survive. The German Committee was also responsible for tackling the Jewish issue – that is, the rights of the Jews in Germany. As we have seen above, the Jews tried to retain the rights bestowed upon them by Napoleon Bonaparte.

Other conferences in the nineteenth century profited from the procedural innovations that were made during the Congress of Vienna. They learned from its successes and from its failures. The Vienna Congress's construction tried to balance inclusion and exclusion in such a way that the number of decision-makers would be limited through exclusion,

thereby avoiding too much complexity. The Great Powers were kept on board through inclusion, thereby avoiding the risk of deciding on a Final Act that would not survive the Congress for more than a few years. The procedures thus assured a European political constellation that would survive until deep into the nineteenth century. The procedures therefore helped to build a forward-looking state system. Yet the content was mainly reactionary and backward-looking, and this undercut the effectiveness of the forward-looking aspect. While the structure of the Congress of Vienna fostered institutionalization for the future, the content undermined it. It is therefore now necessary to turn to content by looking at the process of negotiation – in other words, the conversations between the main actors about their common and diverging interests and how they managed to make them converge into a single agreement.

Conversations

To gain a better understanding of the interactions of the contending parties, or counterparts, we will focus mainly on the Inner Circle, the Four and then the Five, and on their biggest headache: Poland. This understanding of the negotiation process is vital for a comprehension of the outcomes to which we will turn in the convergence section of this chapter. There is a legal reason for focusing on the Inner Circle, although being legal it might not be legitimate. The Treaty of Paris of 30 May 1814 (Zamoyski, 2007: 197–203) gave the mandate to the Vienna Congress to negotiate the issues to be settled after the Napoleonic Wars. Its article 32 invited all of the involved and relevant powers and parties to send their plenipotentiaries, and over 100 did so, including the Pope in Rome and the Sultan in Constantinople. However, a secret provision in the treaty limited the decision-making to the four members of the Quadruple Alliance. Although Portugal, Spain and Sweden were signatories of the Treaty of Paris, they – let alone the other participants – were not aware of this secret article. This created communication problems, despite the fact that using French as the single language of the Congress of Vienna facilitated mutual understanding, and expectations could not be fulfilled, which led to some bitterness among those who were excluded from the very heart of the process. Not being able to sit around the table severely hampered their influence, and as an unknown diplomat in Brussels said on the occasion of the UK's unwillingness to help the euro countries out in 2012: 'if you are not at the table, you are on the menu'.

The middle and minor powers had an opportunity to participate in committees, but as there were no in-between plenary sessions, their voices could not be heard in public. The only plenary sessions of the Congress of Vienna were the opening and closing meetings. Although there are very good political reasons for keeping the decision-making group as small as possible, it is still a strange fact that those who stood at the outset of the Congress of Vienna – being signatories to the Treaty of Paris – and who signed the Final Act were kept out of the decision-making process. When Talleyrand managed to move into the Inner Circle – as France from a power-political perspective could not be left outside – the resentment of the others was raised further. This would create problems at a later stage, as Spain did not want to sign the Vienna Final Act in the end, but this did not stop the Act from coming into being. One would expect consensus among the Eight to be a prerequisite for the Act to be legal, but as the principle of consensus among the

eight signatories of the Treaty of Paris was never literally stipulated as a precondition, it did not stop the others from overruling Spain.

How should we analyze the manoeuvring of the different actors involved? Even limiting ourselves to the Four/Five does not help much in gaining a better insight into the question of why the negotiation process resulted in the Final Act. The father of modern French diplomatic and political negotiation research, Christophe Dupont, gave it a try as far as the Polish question is concerned (Dupont and Audebert-Lasrochas, 2005: 46–47). How to deal with France was the main issue of the Vienna Congress, but this question was relatively easy to manage as long as Napoleon would not be involved. The Polish question, however, being connected to that of Saxony, was the toughest political problem with which to cope. In two interesting models, Dupont and Audebert-Lasrochas try to show the distance or proximity between the counterparts within the Inner Circle of the Five, and how and why their positions changed.

Castlereagh wanted an independent and strong Poland, as it was in the British interest to have a barrier against Russian and Prussian ambitions. Along the same line, the British supported the unification of the Northern and Southern Netherlands as a barrier against France and Prussia. As the others opposed the British position in August 1814, and as Talleyrand was moving closer to Russian Tsar Alexander I in June and July 1814 (with France not yet a member of the Five), Castlereagh felt isolated and invited Talleyrand to establish a coalition of Austria, Britain and France against Russia and Prussia. One thing to observe is the fluency of the negotiation process. It was all about power and the impact of the negotiators' personalities acting within the boundaries of the circles, unless those boundaries hampered politics too much, in which case they did not matter at all. To construct a three powers' arrangement was only possible with France on board. How reminiscent this is of the give and take in other (simulated) diplomatic realities (Sharp, 1978). Only after a row between Austria's Metternich and Russian Tsar Alexander did this coalition materialize. The agreement was made and remained a secret until Napoleon, upon his return from Elba, found the text in the archives of the French Foreign Office and sent it triumphantly to Tsar Alexander. The Tsar was not shocked. Castlereagh then tried to get Alexander – who was not aware of the secret treaty during that phase of the Congress of Vienna – to drop his plan to construct an 'independent' Poland with himself as king, as this resolve would only end up in an enlarged Russia, as it did. Castlereagh failed, however, to convince the Tsar. He tried again to change the Tsar's mind, this time by applying pressure on him through a common front with Hardenberg and Metternich (Webster, 1931).

Metternich started off with a position close to Castlereagh's: Poland should not become a part of Russia. His difference from the British position, however, was that the Austrians were very hesitant about an independent Poland, for two reasons. First, an independent Poland could be a weak and internally divided country and a hearth of political unrest in the heart of Europe. Poland had always been a country in which others than the ruling elite intervened in the affairs of the state. The Polish system of electing the king through councils of the *Schlachta* – nobles from very low to very high rank, and from very poor to extremely wealthy – was seen as a danger to political stability, particularly as these 'elections' could, and were, manipulated by other European powers to their own interest. The second objection can be found in the linkage with the Saxony

problem. As already mentioned, an independent Poland would mean that Prussia would lose even more of its eastern territories than if Poland was divided between it and Russia. As a consequence, the Prussians would demand an even bigger part of Saxony and it was not in Austria's interest to lose such a rich, and therefore important, buffer state. A meeting between Metternich and Russian Tsar Alexander I on 31 October 1814 resulted in a temporary breakdown of their relationship. Although they had to remain on speaking terms for political reasons, the personal relationship deteriorated further, and at the beginning of 1815 the Tsar could not even stand the sight of Metternich, not only because of their differences of opinion, but also because of Metternich's manipulating style, which was connected to rivalries between their mistresses, as well as mistresses they shared, such as the Princess Catherine Bagration (Zamoyski, 2007: 258–259) and therefore had a very personal dimension.

Talleyrand, for his part, also favoured an independent Poland. After all, Poland had been an old and trustworthy ally. Napoleon had resurrected Poland as his vassal state, the Duchy of Warsaw. France's dilemma was the Saxon question. If Saxony was part of Prussia, Prussia would be so strong that it would be a threat to France. On the other hand, if Prussia did not get enough of Saxony in compensation, it would be compensated with more territories in the Rhineland, resulting in a strong Prussia directly bordering on France – an even less attractive prospect. Talleyrand, being realistic enough to see that an independent Poland would not be an option, opted for Polish partitioning as his second best priority – in other words, the status quo ante, as it was before the Napoleonic Wars. This was an important tactical move, as it is easier to converge on secondary priorities than on first priorities. It would not allow Prussia to gain too much of the Rhineland, nor of Saxony. Already in October 1814, the French plenipotentiary pressured Britain's Castlereagh to join him in his resistance to the annexation – or partitioning – of Saxony. In the end, Talleyrand presented proposals to avoid the annexation of Saxony by Prussia on 19 and 26 December 1814. Castlereagh and Metternich went along with this, with the conditions being laid down in the secret treaty of 3 January 1815, as mentioned earlier in this chapter. An important point is the awareness of the three negotiators of the position of the minor German powers. These powers also opposed the annexation or division of Saxony as a precedent that would endanger their own attempts to continue their rule over their own lands, and in view of their position in the future German Bund to come. This is another example of the non-watertight boundaries between the Inner Circle and the Outer Circle. The position of the German states strengthened the hands of the tripartite negotiators of the Inner Circle. It would have been unrealistic to take an anti-Prussian – and thereby anti-Russian – stand if the other German states would not bandwagon with them. This was of the utmost importance for Austria, as it in fact meant that most German states preferred an Austrian umbrella, rather than Prussian, above their heads – a victory in its battle with Prussia for hegemony over Germany (Zamoyski, 2007: 432–436).

Prussia's Chancellor Hardenberg took a very tough position on Poland and Saxony from the very start. The last thing that his sovereign Frederick William III wanted was a breach in the relationship with Russia. Prussia's king was a staunch ally of Russian Tsar Alexander I, as he had been with Napoleon earlier. Keeping this alliance intact meant giving up more than half of the Prussian Polish territories – a loss of many souls. The threat of a weakened Prussia with an insufficient population to sustain its army in the future forced

King Frederick William III to demand compensation, primarily through Saxony, otherwise Prussia would be a victorious power that would not win anything from its sacrifices. The age-old competition between Prussia and Saxony encouraged the Prussians in their eagerness to annex it. Both rulers did not particularly like each other and would not be unhappy if their counterpart lost face, and if possible his throne. A very tough proposal by Hardenberg on 27 November 1814, demanding the annexation of the whole of Saxony, pushed the Five to the brink of war.

Tsar Alexander I, in the meantime, did not change his position at all. As stated earlier, he wanted an 'independent' Poland under his own rule: a Personal Union of Poland and Russia, just as he wanted a Personal Union of Finland and Russia, with himself as Grand-Duke. He foresaw a liberal constitution for Poland, thereby materializing his beliefs in a liberated Europe that would neither be oppressed by its own rulers, nor by neighbouring countries. By following his scheme in Poland, Alexander I did not need to liberalize Russia itself – something that he wanted to avoid at all costs. While he saw Poland as a developed country with some kind of 'democratic' past, where an experiment with some rights for the people – meaning the upper classes – might work out fine, he saw his own country, Russia, as backward. Sharing power with others in Russia, a land without any tradition and experience of power-sharing (perhaps only the Cossack communities could be seen as an exception here) would only lead to chaos according to him, thus undermining his dynasty. Alexander's ideas about Poland were 'a bird in the sky' and the other four negotiators were aware of it. After the Polish insurrections in the years to come, Tsar Alexander I had no problem in eliminating the liberal constitution, which was not actually liberal at all, indeed being one of the reasons for the ongoing Polish resistance against Russian rule. Soon afterwards, the Personal Union was discarded and Poland became an integral part of the Tsarist Russian Empire (Zamoyski, 2007: 532).

The negotiators defended their country's interests and tried to get their own opinions through, which was not always the same thing. They kept an eye on the importance of a peaceful balance of power in Europe, as this was in the interests of all of them: a balance of power among them, allowing for the submission of the middle powers and, through them, of the many minor powers. This was seen as power-sharing under the maintenance of freedom of manoeuvre, which was quite a balancing act as they were all suspicious of the others.

The situation can be seen as competition and cooperation out of fear, both inside and outside the Inner Circle. Like today, there could be a sharp contrast between 'playing for the public eye' and the actual give and take. A famous example is the discussion between Napoleon and Metternich in 1813, at the time when Emperor Napoleon was back from Russia but had already returned to Germany as he was trying to keep his hold over it. Metternich went to visit Napoleon, offering Austrian mediation, as it was too early for Austria to take sides. The two men met in Dresden in Napoleon's camp, trying to negotiate a new status quo. The conversations got nowhere and Metternich was about to leave, already with his travelling clothes on, when Emperor Napoleon asked him to stop by. Napoleon was in the same non-negotiable mood as he had been during their meeting earlier, complaining, shouting and threatening. He then ordered Metternich into a small room and became very friendly, accepting the Austrian offer to mediate without setting any conditions for it. They agreed to set up a conference in Prague, which occurred,

although nothing came out of it as the parties only used their meeting to mask further preparations for war. The time for decisions through negotiation was not yet ripe, as war still had the upper hand. Shortly afterwards, however, Napoleon was beaten at the Battle of Leipzig and negotiation ripeness was there to be exploited, without Napoleon however.

Convergence

Why and how did the main negotiators converge their contradictory stances into common positions? Chapter III of this book acknowledged six main reasons for this. First, there was a geographic need to deal with border issues and thereby with questions of sovereignty. These were the main questions with which the negotiators had to deal, and this also attached their countries' interests to the position of all the states in Europe. The main negotiators therefore only included the major Christian European powers in their decision-making process. The question of territory was closely linked to that of population and therefore also to military strength. No power should become too small, nor one too big. At the same time, it was essential to respect the Middle Powers, as they played an important role in coalition-building. The Great Powers did not trust each other and therefore tried to create equilibrium of territory and population. A Statistical Commission was established to help with this, but the Commission's efforts to introduce wealth as a factor as well – thereby softening the difficult problem of counting and shifting populations – and their proposals of balancing wealth with numbers of people were seen as too soft and unreliable (Dupont and Audebert-Lasrochas, 2005: 42). As the Great Powers therefore looked for equilibrium among them, they needed the Middle Powers as neutral buffers and – if needed – as potential allies. The Middle Powers – countries such as Bavaria, Württemberg, Hanover, the Netherlands, Sweden, Naples, Savoy/Sardinia, Tuscany, Portugal, and perhaps still the victimized Saxony and Denmark – had to help the Great Powers to keep the small countries in check. The Middle Powers were often strong enough to counter revolutions, but the small ones were prone to them.

This did not stop the Great Powers from installing some – not all openly accepted – zones of influence. Austria saw Italy as its zone of influence and managed to sustain this to the detriment of Spain, which lost much of its former status on the Italian peninsula. France regarded Switzerland and the Netherlands as its potential zones of influence. In order to be successful in the Netherlands, France had to help to break up the United Kingdom of the Netherlands. It managed to do so in 1830, when Britain no longer worried about France as it had done before and therefore did not resist when the United Kingdom of the Netherlands fell apart into more or less neutral (the north) and Francophone (now Belgium) parts. On the province of Luxembourg, formally part of the German Bund, a typical distributive fifty–fifty negotiation solution was reached: Western Luxembourg went to Belgium; and Eastern Luxembourg stayed in the Netherlands, but only connected with it through a Personal Union with King William I of Orange-Nassau. The Luxembourg issue surfaced almost half a century after 1830, when France's Napoleon III wanted it, but Prussia's Chancellor Bismarck would not allow it. Although the question did not lead to an immediate war between Prussia and France, it lingered on and contributed in the second half of the nineteenth century to further tension, culminating in the Franco–German War of 1870–1871, a war that upset the balance of power in Europe. This war finished off the

last arrangements put in place by the Congress of Vienna, unbalancing Europe in its wake and in due course igniting the First and Second World Wars and the Cold War.

A second reason for the convergence by the main negotiators is the systemic dimension – in this case the strength of the states and of the system made up by them. This study has already mentioned that the Statistical Committee had to inform the negotiators about population figures, thus allowing the Great Powers to remain the same in the future. Their interests converged on that in the end, but it was a tough fight and some of the issues could not be solved. Spain, for example, did not sign the Final Act, as it was unhappy with Austria's position in Italy and the loss of Spanish possession there, particularly as the question of Naples could not be solved before the Congress of Vienna came to closure. The great systemic question of Poland and Saxony – both of which were important to the inner strength of at least two of the Great Powers and of the state-system of Europe as a whole – came to closure on 3 February 1815, which was relatively early in the process. It was clear that there would not be any contextual change on Poland and Saxony in the near future, so the Great Powers ended the 'mutual hurting stalemate' by taking the 'enticing opportunity' of compromising in such a way that nobody would lose face and interests. Poland thus became nominally independent, as Britain, France and Austria had wanted, but it became *de facto* Russian, as the Tsar demanded full control over it. The Prussians were compensated in the Rhineland, as the British wanted, while Saxony was divided into an independent (as Austria wanted) and a Prussian half, which was a nice combination of distributive and integrative bargaining, fifty–fifty solutions and package deals. The French got what they wanted as well: they could keep some of the minor territorial gains that they had made after the Revolution.

However, the conviction of the Great Powers – especially Austria's Metternich – that the pre-Revolutionary order should be restored undermined their attempts to erect states with a strong and durable system. The old regimes had lost much credibility in the eyes of the European population and this meant repressing revolts all over Europe if needed. The Great Powers therefore had to act together in the future as well, and the Russian Tsar in particular believed that for such action a common system should be erected. To strengthen the European system as a whole, the Five formed the Holy Alliance at the initiative of the Tsar (Davies, 1996: 762–763). The other powers did not see much value in the Holy Alliance, just as the Great Powers did not believe too much in the League of Nations 100 years later, but they thought that it would do no harm to accept it. With or without such an alliance, the Congress of Vienna gave Europe a relatively long period of stability. The nineteenth century would indeed become one of the more peaceful eras in history (Taylor, 1954: xxi).

Part of that system leant on the colonies of the countries attending the Congress of Vienna. It was therefore important to take into account not only the situation inside Europe, but the wider world as well. The British had great difficulties with this. They were afraid that involvement by the Congress of Vienna into those external issues would limit their freedom of behaviour outside Europe, which was exactly the reason why they had gone to war on the continent in the first place: to prevent one of the powers from dominating and thereby threatening British commercial and political interests, both on the continent and beyond. The British therefore kept the colonial issues off the agenda and prevented the others from establishing a committee on colonial and maritime issues.

Under pressure from public opinion at home, however, they pushed for the slave-trade issue – but not slavery as such! – to be considered. The other powers agreed to this and a Committee on the Slave Trade was formed. It never came to real agreement, however, as the interests of powers such as Spain, Portugal, the Netherlands and France did not – yet – allow for it. In other words, it was not possible to converge the interests of the stakeholders, as they were too far apart and as the British had already gained their first priority: no interference in blue-water and extra-continental territories. Losing one's second priority in order to safeguard one's first priority, and negotiating on what is not too important – and taking the risk of losing it – while avoiding any negotiation on one's main issues – these proved to be excellent strategies, worthy of the British. No negotiation is negotiation. It should be added, however, that the British also pre-empted serious talks on the colonies through parallel informal bilateral negotiations with the countries from which they had taken colonies during Napoleonic times. In particular, the British struck a deal with their maritime arch-rivals the Dutch, to whom they returned Indonesia and supported in gaining the Southern Netherlands, while they could keep Dutch possessions in Africa (*inter alia* South Africa) and Asia (*inter alia* Ceylon) in this trade-off.

As a third dimension, it is relevant to look at the parties' needs and to see how it was possible to find enough common ground between them. Earlier paragraphs have already partly dealt with the question of interests and positions. As none of the Great Powers desired to be the new hegemonic power of Europe – with the Russian Tsar as a potential exception to this –and as they all wanted a European system that would allow them to deal with their own interests without interference, there was a great potential for convergence. We saw with the Polish/Saxony example how the negotiators moved from their initial stances to converted positions through compromise (including distributive bargaining and distribution of spoils) and collaboration (including integrative bargaining through packages deals, trade-offs and value creation). This was a mixed approach that worked well to manage complexity, with ambiguity facilitating this process. The spoiler, however, was their mutual distrust, which pushed the Congress of Vienna close to the edge, especially on the almost intractable Polish issue. It might not be a coincidence that this question endangered convergence so much, because it was about one of the former Great Powers of Europe, whose dissolution in 1795 unbalanced Europe for a very long time, in a way until after the Second World War. The other former Great Power, Spain, was still around and therefore did not pose a real threat to the agreement. The Spanish question was dealt with during the conference, but it was not absolutely necessary for the balance of power to have the solution in the Final Act. Again, it might not be a coincidence that this Great Power issue could not be solved, and Spain was therefore not part of the Congress of Vienna's agreement. Through the inclusion of France, no major interests were kept outside, and the interests converged, therefore avoiding the threat of an early collapse of the Congress of Vienna's system (Davies, 1996: 763).

Dimension four is about the resources that were involved, which were partly discussed above when we wrote about the soul-trading, shifting populations around to please rulers and the Great Powers, and disregarding the wishes of the lower nobility and the ordinary population of those areas. We saw that attempts to value the potential of the different regions under scrutiny did not materialize, mainly because of a lack of 'hard' criteria, and partly because it was not in the interest of some of the powers to do so. Perhaps

it was also about perception. From early times onwards, rulers were used to looking at the extension and population density of countries as a token of their value. It was only later in the nineteenth century that this perception started to change as broader layers of the populace became involved in politics. Cities became ever more important and agriculture dwindled. City inhabitants looked much more at trade and industry as sources of power, and those who stuck to the traditional view of linking land to power lost their influence in the state system. At the same time, the expansion of Europe overseas diluted the tensions within Europe itself; the power struggle went on, but in the colonies. The colonies' material resources replaced some of the resources in Europe itself, also helping to delink European territory and population as a power resource in negotiation processes. It is perhaps telling that the Great Powers of the Congress of Vienna did not really struggle with collective resources, such as waterways. The Committee on International Rivers fairly easily converged on the interest of the relevant participants at the Congress of Vienna.

The fifth dimension concerns the role of regulators: rules and regulations; and norms and values. With regard to norms and values, there was a lot of talk about them, but they were not prioritized at all. Norms and values were used as arguments, as tools in the defence of the Great Powers' interests. They did not have much intrinsic value, and none at all for the British, French and Prussians. France – that is, Talleyrand – was a master in using principles to argue for his interests, but he dropped them without any problem if they became counterproductive to his intentions. This was perhaps also a little the case for the Austrians and Russians. As Austria was a potentially weak power, open to all sides for foreign intervention (although it thought that the threat of the Ottoman Empire could by now be discarded), some norms and values were of more than a propagandistic significance. 'Ironic as it may seem, Metternich presaged Wilson (the US President who played such an important role at the Paris negotiations of 1919) in that he believed that a shared concept of justice was a prerequisite for international order' (Kissinger, 1994: 79). The Russian Tsar did not need these principles. Indeed, they were actually a threat to his material interests as they could mean that he might have to give up some political influence to his underlings. Tsar Alexander really believed in his mission to enlighten and liberate Europe, and he made such a show of it, that he could hardly disband it. Actually, as he really believed in them in a spiritual way – not to be implemented, but to be admired – values and norms played some role in his posture. He went as far as to propose the creation of a European army, offering the Russian Army as its nucleus. It was striking, however, that Alexander I could also be very brutal and blunt, as were his soldiers. Meanwhile, as far as rules and regulations were concerned, we have already seen that the time was not yet ripe for them, as was the early part of the twentieth century. The international system was just too weak. The Congress of Vienna itself had hardly any fixed procedures and those that it did have were ignored if needs be. Still, it was the Final Act that provided Europe with some regulations that it had hardly had before, as those from Westphalia and Utrecht were washed away by the political currents of their time.

Finally, the sixth dimension is about the role of time as a boundary to the negotiation process. Did time help the convergence of the interests to come to closure? It did, but it had to be helped along. The negotiations had a tendency to drag on, and there was not an outside power to drive the Great Powers in the direction of a Final Act. The Great Powers knew that time was limited. If they went on spending their time on negotiation,

they would endanger the stability of their own countries. For Austria's Metternich, it was not too much of a problem, as he played a home duel, but even Metternich had to reckon with Austrian Emperor Francis I, who became weary with the Congress of Vienna for social and financial reasons. The conference, with all of its festivities, cost much more than the money spent by the royals and their delegations, apart from the quite common habit of foreign delegations becoming indebted. Much of the money that they owned to the Viennese tenants and shopkeepers was never repaid, the same phenomenon that had been observed in Utrecht, Münster and Osnabrück. Who, in the absence of international private law, could force the foreign sovereigns to pay? As well as the political scandal that it would arouse, this repayment of debts was an issue that Emperor Francis I did not want to take upon his shoulders. The emperor was an old man, however, and his successor might be less malleable. The Prussians had to go home as there was much unrest in their army, unrest that eventually died down after Field Marshall Gebhard Leberecht von Blücher acted in a successful way at Waterloo, allowing the Duke of Wellington to win the battle. The Russians also needed to attend to their interests at home and – like Prussia – they had to integrate new populations into their realm. Russian Tsar Alexander I had been away for a long time, and although his administration was extremely obedient to him, he had to attend to his business. He became a little estranged from Russia through his long absence. He had enjoyed all the balls and the ladies in Vienna, had delighted in Paris and had seen London, for after all, he was not really of Russian descent. His German roots made him feel a stranger in his own country – understood abroad but not at home. This was perhaps one of the reasons why he surrounded himself with foreign administrators (mainly Germans).

For two negotiators, it was absolutely vital to go home (Zamoyski, 2007: 418 and 516). Castlereagh was summoned home in early 1815 by British Prime Minister Liverpool, who had grave political problems in the British Parliament. The prime minster was so much in need of his foreign minister that he sent the Duke of Wellington to Vienna to allow Castlereagh to return to London, which was when the Poland/Saxony issue was settled. France's negotiator Talleyrand had to manage King Louis XVIII of Bourbon, who was destroying his relationship with his own population by giving in to ultra-royalist nobles who wanted an extreme restoration, undoing as much as possible of what the French Revolution and Napoleon had brought to the people. The French people, having smelled the potential of participation in political life, were not easy to convince of this reversal. This was on top of all the other material issues that had to be settled. When Napoleon came back from Elba, all French resistance to him melted away, like snow from the sun. All of the armies sent out against him by King Louis XVIII joined his course without exception, including the last and the biggest: the army under Marshall Ney. No shot was fired, and no person killed, but the French king had to flee and, with some difficulty, the British managed to convince him not to cross the Channel but to stay in Ghent. As far as Louis XVIII's legitimacy was concerned, it was next to nothing. It is a wonder that the alliance put him back on the throne after Napoleon had been chased out again, but this was just to implement its principle of the legitimacy of rulers. Fifteen years later in 1830, the Duke of Orléans, supported by Talleyrand, successfully claimed the French throne. This was Talleyrand's last regime change, and as a reward he became the French ambassador to London.

The convergence of interests came to closure with the Final Act of the Vienna Congress, the drafting of which started just before Napoleon landed in southern France to start his march on Paris. The Final Act was signed on 9 June 1815, nine days before Napoleon was to be defeated at Waterloo. All of the countries participating in the Vienna Congress – apart from Spain, the Holy See and Turkey – were signatories. Following Napoleon's abdication, the second Treaty of Paris was signed on 20 November 1815. It provided some changes to the Final Act of the Congress of Vienna, mainly to the detriment of France's northern border. France had to pay reparations and allow an allied occupation force of 150,000 men. The allies were in pains not to punish France too harshly for its recent behaviour, as they did not want to undermine France's role as a future balancer in Europe, although severe punishment was demanded by public opinion. Talleyrand was kept out of the negotiations between the Four, but was eventually invited in for a conference without negotiations, which were already concluded. Talleyrand and his two plenipotentiaries were excluded from the final decision-making. Britain's Castlereagh, opening the meeting, spoke first to the Prussian plenipotentiaries, making it clear that no further argumentation would be allowed. This was an indication that Prussia's inclination was to be much tougher on France, while Russia, Austria and Britain thought that this would be counterproductive in the long term. It also confirmed that the Prussians had been the most anti-French negotiators during the meetings of the Four/Five in Vienna as well, as they were the ones who felt most humiliated by Napoleon and in a way by their own king. In the meantime, Russian Tsar Alexander I had become disillusioned with conference diplomacy and had designed his own plans for eternal peace – including his dictum that all men should be treated like brothers – to be tabled in a different format by Tsar Nicholas II at The Hague Peace Conventions in 1899 and 1907, of which he was the initiator.

A comparison between 'Vienna' at the beginning, and of 'The Hague' at the end of the nineteenth century, favours Vienna over The Hague as far as effectiveness is concerned. It is true that the First World War precluded the Peace Conventions and The Hague Academy of International Law from being implemented (Hoogstraten, 2008: 131). The conventions themselves, however, came to hardly any conclusion. The problem of the 1899 convention, where 108 delegates from 26 countries convened, was the 'ambivalence of the agenda, concerned on the one hand with peace by arbitration and on the other with the conduct of warfare' (Tuchman, 1966: 251). However, 'This was the first ever occasion on which an intergovernmental, in technical terms a "diplomatic" conference was accompanied by a great show of organized public opinion in its support' (Best, 1999: 623). The convention decided to create a Permanent Court of Arbitration and called for a follow-up meeting. At the second convention in 1907, 44 countries sent 256 delegates. However, 'Once more the nations found themselves committed to The Hague and intensely disliking the prospect' (Best, 1999: 277). A Permanent Court of International Justice was discussed, but not accepted. While Vienna settled a war, The Hague could not prevent one. Perhaps the inclusiveness of the conventions, as consensus between all of the nations had to be reached, was one of the main factors for its unsubstantial outcome.

In Conclusion

Inclusiveness and exclusiveness helped to get the work done at the Congress of Vienna in the early nineteenth century. The mass of the interested parties were included in the process through a series of festivities, but were excluded from the day-to-day decision-making process. This ongoing process took place between the five Great Powers. To include all of the major powers into this process was one of the Congress of Vienna's wise decisions, although it was not self-evident at the time. This inclusion had to do with the interests of most of the victorious powers, and with the negotiation skills of the French plenipotentiary, Talleyrand. At the very start, and at the very end after Napoleon's defeat at the Battle of Waterloo, the French were excluded, but as they took full responsibility for the Final Act of the Congress of Vienna and the negotiation process leading up to this agreement, the Final Act was carried out by all five major European powers.

This Great Power inclusiveness gave the Congress of Vienna its forward-looking outlook and secured the survival of its accomplishments until the European revolutions of 1848. The Great Power inclusiveness in the Inner Circle of the Five, while excluding the smaller powers, gave the negotiators the opportunity to manage complexity, or even better to avoid complexity. It allowed for a rather smooth – be it ambiguous – bargaining process. The process involved playing chess with five parties and trying to forge majorities, although only a four-to-five stand-off could really be expected to wrench the isolated power into the agreement that the others wanted, and was achieved through political and, on a few minor occasions, through the threat of war.

An alternative process could have been to include more parties, but strict procedures plus strong presidents would then have been needed to facilitate this process. The world was not up to that at the start of the nineteenth century, as it was not a century later at the Paris Peace Conference in 1919, which was even more exclusive than the Congress of Vienna. At a time when seventeenth- and eighteenth-century questions of precedence were still unresolved and were still a nut to be cracked, the instalment of fixed chairs was not workable. The countries would not be able to allow their counterparts to take a formally higher position; everybody had to be equal, at least in theory.

Procedure was still too much of a political issue. It often is today as well, but we have overarching international structures and organizations that have a mandate to deal with those issues. Leaving it to the individual countries would even be a problem in today's world. Procedure also had to do with the perception of sovereignty and legitimacy, not only with power and equality. In an official sense, a breach of sovereignty was considered unacceptable, although it happened on a large scale when the Five thought that it was necessary, as on the 'soul trade' issue. Having the kind of organization that would have a mandate of its own, with powers to do what states would normally be allowed to do, was not imaginable for the Great Five. It all had to come from their consensus-seeking proceedings, without any possibility of out-voting anybody in the Inner Circle. The lack of internal procedures created great flexibility and opportunities, but grave technical problems at the same time.

The importance of the Circles is mirrored by the number of times that these groups met. The Four/Five had 41 sessions, while the Eight, also signatories to the conference that gave Vienna its mandate and legitimacy, as well as the circle that had to ratify its Final Act,

met only nine times. The Five then consulted – and negotiated with – members of the Eight during these nine sessions, but they had bilaterals with them as well, and they met them in the committees on specific subjects. Spain, Portugal and Sweden were thus not completely neglected. One could say that they were partially excluded and partially included in the process. The fact that Spain refused to sign the Final Act, which strangely enough did not make the Act invalid, signals the danger of leaving some relatively important powers out of the process. However, if seven of the eight powers agree, what can the isolated party do? One might conclude that in the end the decision-making procedure of the Congress of Vienna was consensus, but consensus minus one could still be regarded as a forum that could make a legitimate conclusion. This was a lesson learned by the Conference (later Organization) on Security and Cooperation in Europe (CSCE, later the OSCE) nearly 200 years later, when the issue of Yugoslavia had to be agreed. This issue of inclusion and exclusion is, of course, quite a dilemma, as the country that will resist until the end will probably be a main stakeholder, and excluding a stakeholder raises problems in implementing the agreement.

Excluding the vast majority of the stakeholders, who numbered approximately 200, could be seen as a bigger possible threat to the value creation of the Congress of Vienna and its sustainability over time. However, the Middle and Minor Powers of Europe were too dependent on the Great Alliance to be able to undermine the new old order. They had to cling to the Great Powers, as nearly all of these less-powerful countries were under increasing pressure from a growing middle class demanding more political influence, or at a later state political independence if they were from a sizeable minority. Monarchs were pressured by their own populace and had to cling together as an overarching European ruling class, severely weakened by the ideas of the Enlightenment and the American and French Revolutions, not to forget the smaller spontaneous rebellions such as those in the Southern and Northern Netherlands, which had swiped away their rulers even before the French had staged their own regime change.

It should be noted, however, that the old order from before the French Revolution had been restored *de jure*, but the Congress of Vienna *de facto* sustained much of the status quo of 1813 and not the *status quo ante* of 1789. So did most of the countries. The vast majority of the civil servants in the new United Kingdom of the Netherlands were people who served the Batavian Republic and then Napoleon. King William of Orange preferred those who knew how to direct a centralized state over those who wanted to go back to the old particularism and regionalism, the 'Orangists'.

In his 'Seven Lessons Learned from the Congress of Vienna', Guy-Olivier Faure (Faure, 2004: 12–13) concludes that the lessons from the Vienna negotiations are still highly relevant today. First, the effectiveness of a negotiation correlates strongly with the amount of advance preparation on formula and detail. This is certainly true. It is striking that the parties to the Congress of Vienna were ill-prepared, and the same is true for the other great congresses in European history, as discussed in the preceding chapters: the Münster/Osnabrück conference in 1648; the Peace of Utrecht in 1713; and the Paris Peace Conference in 1919. The effect of this in Vienna was a long search for common ground, which greatly undermined the effectiveness of the negotiation process and the durability of its Final Act, a Final Act that was basically a basket of different agreements, not the kind of Single Text that we know today (if any). Of course, today's preparedness

for multilateral negotiations differs from country to country. In general, however, the meetings are well prepared and will often only materialize if the chances of success are more than 50 per cent at least. The pre-negotiation phase is often more important than the negotiation itself, especially in the European Union.

Faure's second point in enhancing effectiveness is about the importance of information-gathering, be it before the meeting starts, or during the meeting itself. We saw that diplomats at the Congress of Vienna tried to gather as much information as possible, often in undiplomatic ways through secret police, festivities and mistresses. They were aware of the importance of information and it helped them to oversee the process. They did not have the problem that information could leak to a strong public opinion at home and they could thus be more focused than diplomats in the new millennium.

The third point is about division of labour within the delegation, which should be adequate. In some delegations at the Congress of Vienna, there was indeed a division of labour, especially in the delegations of countries with a populace that was used to voicing its concerns, such as Great Britain and France. It seems that the British delegation under Castlereagh, and later Wellington, had the best division of labour. Diplomats were on the same wave-length, at a distance steered by the London cabinet. It was more difficult for the French, as Talleyrand had to manage ultra-royalists within his team who were influenced by their constituencies back home, while King Louis XVIII was not able to discipline them.

For the three authoritarian monarchies to the east, there was not much of a team. Austria's Metternich, in close cooperation with Gentz, did not allow for any aberrations, not even by his own emperor. Prussia's Hardenberg and Humboldt had to get their own act together, as their king did not bother about the process, as long as it went in the desired direction. When it did not, the Prussians became extremely stubborn, and indeed nearly killed the Congress of Vienna's process. As for the Russians, the Tsar and his delegation were personified in one actor: the Tsar himself. Of course, Tsar Alexander's ambassadors and ministers did play a role, but they could not do anything without his permission and a *de facto* division of labour was out of the question. Did this mean that the eastern delegations were therefore less effective than the western ones? Not necessarily, as the advantage of mono-action created clarity, saved time and strengthened decision-making. The downside, however, was the character of the Tsar, who could be very unpredictable. For a stable negotiation process, predictability is of the utmost importance and present-day processes are indeed more stable and more predictable – in general – than the Congress of Vienna. With all its ups and downs, Vienna was a rollercoaster.

Faure's fourth point is to be soft on form and tough on which goals to achieve, which is in line with the ideas of Willem Mastenbroek that were mentioned in earlier chapters (Mastenbroek, 1989 and 2002), as well as with the profile of the average British negotiator (Meerts, 2012b). In other words, be soft on the software of negotiations (for example, relationships and exploration), and tough on the hardware, interests and power. For the Congress of Vienna, this seems to be true for all five main negotiators, except for the Russian Tsar, who could be unnecessarily rude, while giving away some of his goals too easily. For example, he gave in without any ado on the idea of putting Napoleon on Elba.

The fifth point is to prepare concessions carefully and to time them well. The impression of the Congress of Vienna is that concessions were often not prepared and not timed,

leading to unnecessary mayhem. Diplomats nowadays will dig into the likeliness of their counterparts conceding on certain issues, while already asking themselves what they might give them in return. In long-lasting processes, like those in the European Union, the diplomats know perfectly well what the balance of concession is and when the time is ripe to strike the deals. The balance of interests in the EU changes slowly over time, but in general there are hardly any structural changes. On security, for example, the United Kingdom and the Netherlands are pro-Atlantic, joined by Portugal; France and Spain are pro-continental, joined by Germany; plus there are powers such as Poland and Italy who try to keep the balance between the two.

The countries' positions are quite predictable, so concessions can be timed, and normally they are done at the very end of the process. Sometimes the concession kills that process, but as everybody knows that time is just a tactical device and not many want to derail the process, they normally succeed in solving the problem. Here we see a huge difference between 'Vienna' and 'Brussels'. Its root cause is the difference of organization between the two: 'Vienna' was under-organized; 'Brussels' is over-organized.

The sixth point, Faure states, is that when involved in multilateral negotiations with coalitions, it is easiest to start by stating what one refuses to do. It is quite clear that this was very much the way in the Congress of Vienna. Actually, they were hardly able to move from 'no' to a 'yes', something that we still notice today in negotiations with representatives from countries south-east of the city of Vienna. Starting with a 'no' might be easy indeed, but perhaps it is too easy. It often gives rise to 'positional bargaining'. It would therefore be better to start in a positive way by indicating options for convergence and stressing potential common ground. If stating demands, these should be linked to an indication of the trade-offs that one is willing to concede, provided that one's main priorities are met. As noted above, however, to bargain secondary priorities is often much easier than primary, implying that the negotiator will have to be very aware of his or her priorities.

Ambiguity is of the essence, as stated in point seven. Ambiguity helps the negotiator to manage complexity and to circumvent contradiction. This was true for Vienna and remains true today. Comparing the negotiations at the beginning of the nineteenth century and those in the twenty-first century, however, shows that there was more tolerance for ambiguity 200 years ago. The Congress of Vienna was as ambiguous as it could be, and not always in a constructive way, and this was broadly accepted by the negotiators. It served its purpose, which was one of the reasons why we had a Final Act at all. In today's world, ambiguity is much less tolerated, as it undermines control. Control is the password for conference diplomats in the new millennium.

The Congress of Vienna was chaotic, but because of its construction in several layers of influence, its relative power balance within the Inner Circle and the relatively wide common ground among the Great Powers, it did reach a substantial outcome, an outcome that created stability, as well as laying the foundations for a lot of instability to come. Nevertheless, the system of the Congress of Vienna did prevent another pan-European war in the nineteenth century, although it could not prevent the world wars in the twentieth century.

Serious attempts had already been made to guarantee a more stable Europe. Already before the Vienna Congress, Britain and Russia had agreed in 1805 on three principles to

stabilize the continent: small states should be united in some kind of regional federation; an acceptable law of the nations should be established; and an international arbitration authority should be created in order to mediate disputes between states. In addition, the 1814 Treaty of Chaumont ruled that 'the signatories were obliged, even after a treaty of peace, actively to promote an international peace' (Gruner, 1993: 24). 'Vienna' had a positive effect on peace and stability in Europe, or at least on the balance of power among the powers. Notwithstanding local uprisings and wars, the balance among the sovereigns was largely maintained for seven decades after Metternich lost control: 'The European balance worked untrammelled in the seventy years between the fall of Metternich and its several repudiations by Lenin and Wilson' (Taylor, 1954: xxi). This did not mean, however, that 'Vienna' could be seen as the beginning of a series of effective international conferences to secure the peace: 'The Great Coalition was thus finally dissolved; the Concert of Europe had disintegrated, the Holy Alliance had succeeded in destroying the Quadruple Alliance, the Conference System had failed' (Nicolson, 1946: 271). Vienna did not yet provide the world with a 'conference system', which came into being at the very end of the nineteenth century with – as a first step – the Convention for the Pacific Settlement of International Disputes (1899), the so-called 'The Hague System' (Karns and Mingst, 2010: 67).

CHAPTER IX

The Twentieth Century: Reputation and ‘Egotiation’

This chapter was written specifically for this treatise in 2013, and was pre-published as Meerts (2013c).

CHAPTER IX: THE TWENTIETH CENTURY: REPUTATION AND 'EGOTIATION'

Depending on the circumstances, the negotiator's character, personal preferences and emotions can take precedence over the interests of the stakeholders and their representatives. In such a situation we might talk about 'egotiation' instead of 'negotiation', meaning that the ego of the negotiator is an obstacle to effective representation of interests (Meerts, 2010: 28–29). Here we do not mean ego in the Freudian sense, but in the political sense: the self-image and the prestige of the negotiating politician or diplomat and, by extension, of his or her country. In certain situations, protecting self-image and prestige will be seen as more important than the object of negotiation. Protection of the leader's 'face' and of the country represented will take priority over the needs and the interests of the state, or even of the negotiator (Faizullaev, 2006), while it will induce secrecy as 'representatives will prefer closed-door bargaining if reputational concerns are sufficiently strong' (Stasavage, 2004: 681).

By analyzing the role of leading personalities, this chapter will first look at seven turning-point conferences in the twentieth century, after which it will briefly profile fourteen leading negotiators who took part in these meetings. This cannot and will not provide us with a comprehensive study of 'egotiation' in the last century, but it will provide us with some indications of the effects of personality on the processes of international negotiation in recent times (Faizullaev, 2006).

It is postulated that politicians are power-brokers, people who want to gain power and to use it as a tool in controlling others, thereby harvesting profits for themselves and for their party. In order to do this, they need to have a positive self-image, while they strive to be respected by others, either through doing well or through fear. Legitimacy, in whatever form, will make the wielding of power more effective, and a prestigious leader will have no insurmountable problems in governing his or her people. Prestige is therefore indispensable, but prestige will have to be defended against those who want to damage it. This in turn might lead to situations in which upholding prestige becomes more important than defending specific material interests. Prestige can thus be defined as an immaterial interest that can have both positive and negative effects on striving for material profits. Behind the façade of prestige sits the ego of the politician, and we can postulate further that the more powerful the leader, the bigger his or her ego, and the bigger the impact of his ego-state on the negotiation process. This chapter will therefore focus on some of the most powerful negotiators of the twentieth century, trying to discover the 'egotiation' effects of their behaviour.

Although 'egotiation' has been defined as a phenomenon connected to personality, one should not overlook the dynastic and state dimension of the term. Dynasties and states have a reputation. They have some measure of prestige and defending this prestige is important, as it will help the dynasty or the state to assert its position in the world and

thereby facilitate the defence of its material interests. The dynasty or the state thus has an 'ego' as well, including its positive or negative impact on the processes of international negotiation. Thus, for instance the decision of US President George W. Bush in the aftermath of 11 September 2001 to help the Northern Coalition of Tajiks and Uzbeks to drive the Taliban out of Kabul can be seen as a rational action that was aimed at destroying the protectors of al-Qaeda. However, it can also be seen as a show of American force, along the lines of 'we will not let our reputation as the most powerful country in the world be damaged by a bunch of terrorists'. Furthermore, it can be looked upon as old-fashioned revenge, and finally as an ego-based decision by the president, who felt that his prestige and 'face' were at stake. In short, both the American people and the president were outraged, so action had to be taken, particularly as action orientation is a dominant feature of American societal and political culture. This action might, and indeed did, lead to a situation of entrapment that was not in the interest of the United States, nor beneficial for the well-being of non-terrorist segments of the Afghan population. It resulted in 'an international conflict for the sake of pointless goals – national prestige or the vain glory of a ruling elite' (Joll, 1982). Perhaps the reaction was not pointless, but the process and outcome were.

The seven conferences are characterized by the limited number of real decision-makers. The wheeling and dealing is done by the most powerful, surrounded by other less important negotiators, as well as their advisers. One of the negotiations that is examined is *de jure* multilateral (Paris in 1919), but *de facto* trilateral. Another (Munich in 1938) is *de jure* a four-party negotiation, but *de facto* bilateral. We then have a true trilateral negotiation (Yalta in 1945) and four bilateral meetings (Vienna in 1961, Beijing and Moscow in 1972, and Geneva in 1985). The chapter will examine why self-image and prestige – the software of negotiation – took precedence over the hardware, and what the consequences of this were for the negotiation processes in which they played a decisive role.

The multilateral case is the Paris Peace Conference at the end of the First World War, which led to the Treaty of Versailles in 1919. Of all the negotiators, this chapter will focus on the main three – Georges Clemenceau of France, Lloyd George of Britain, and Woodrow Wilson of the United States – although it will not completely disregard the others. George Clemenceau was the President of the Paris Peace Conference and all substantial negotiations took place between him and the other two political leaders. Although the Prime Minister of Italy, Vittorio Orlando, was an integral member of the core group of negotiators – the Council of Four – he never played an important role and even left the conference before it was over. The chapter will also ignore people like the Japanese Prime Minister Saionji Kinmochi, the Romanian Prime Minister Ion Bratianu, and the Chinese Prime Minister Lou Tseng-Tsiang, as they were outside the actual decision-making. Although others were very influential as advisers, including John Maynard Keynes for example, they were not the real decision-makers and are therefore also omitted from this discussion. It is interesting to observe, by the way, that most important multilateral conferences of the past two centuries were actually negotiations among a very limited set of actors. This was true for the Congress of Vienna in 1814–1815, and Paris in 1919, while today we have a UN Security Council of only five parties.

The bilateral and trilateral cases are: Munich in 1938, with Britain's Neville Chamberlain, France's Édouard Daladier, Germany's Adolf Hitler and Italy's Benito Mussolini; Yalta in

1945, with Britain's Winston Churchill, US President Franklin Roosevelt and Soviet Premier Joseph Stalin; Vienna in 1961, between US President John F. Kennedy and Soviet Premier Nikita Khrushchev; Beijing and Moscow in 1972 between US President Richard Nixon and China's Mao Zedong and the Soviet Union's Leonid Brezhnev, respectively; and between US President Ronald Reagan and Soviet leader Mikhail Gorbachev in Geneva in 1985. The impact of 'secondary negotiators' such as US National Security Adviser and (later) Secretary of State Henry Kissinger and China's Zhou Enlai will, of course, be taken into account, as their behaviour has probably been even more decisive in reaching an outcome than that of the official decision-makers. While the Paris Conference was selected for examination because it was the most important bilateral conference of the twentieth century, and the one with ample information about personalities, it was also of course the closing conference of the First World War. We could also, like Kalevi Holsti (Holsti, 1991), have selected another multilateral conference, namely San Francisco, where the United Nations were founded, as the League of Nations were created in the aftermath of Versailles in 1919. However, there are far fewer documents available on the personalities, while the San Francisco Conference itself was a mere consequence of much more decisive negotiations, such as those in Yalta. The bilateral and trilateral cases were chosen because of their connection with the Second World War (opening and closure) and with the Cold War (at the start, in the middle and towards the end).

We realize the shortcomings of such a limited number of conferences, all of which more or less centre on Europe, as well as such a select group of leaders from the traditional Great Powers of the world. However, it has nevertheless been extremely difficult to distil the characteristics of each personality from the available records and biographical details of the pivotal people. The emotional side of their behaviour is thoroughly underexposed, let alone their actions, which could be labelled as being the consequence of the projection of their self-image and the defence of their prestige, which run counter to the material interests of their countries and even of themselves. While participants in negotiation seminars will easily recognize the concept of 'egotiation', as they have experienced this problem in their own dealings with political leaders, it is extremely difficult to prove it from the existing literature. After all, it is not only about the character and the behaviour of the negotiator, but very much about his or her actions during the negotiation process.

It is from novels that we learn more about the psychological side of the relationship between the leaders and the ensuing bargaining processes. For example, a good example of the psychological dimension can be found in Tolstoy's famous novel *Hadji Murád* (Tolstoy, 2003: 58):

> The eyes of the two men [the Avar/Chechen rebel leader Hadji Murád and the Russian General Vorontsóv] met, and expressed to each other much that could not have been put forward in words, and that was not at all what the interpreter said. Without words they told each other the whole truth. Vorontsóv's eyes said that he did not believe a single word Hadji Murád was saying, and that he knew he was and always would be an enemy to everything Russian, and had surrendered only because he was obliged to. Hadji Murád understood this, and yet continued to give assurances of his fidelity. Vorontsóv understood this also, but nevertheless

> he spoke to Hadji Murád in the way he considered necessary for the success of the war.

This is a good example of the contrariness of 'egotiation', where the material interests of both parties take precedence over their feelings, while keeping their sense of honour intact.

Closure of the First World War

The Paris Peace Conference had to create a new order for Europe and thereby for the world (MacMillan, 2001; Sharp, 2008). Between January and June 1919, negotiators from all over the world, excluding those who had been defeated in the First World War, gathered in Paris to settle the war issues and to lay the foundations for a more stable system of international relations than the 'Balance of Power' of the nineteenth century. Like at the Congress of Vienna in 1814–1815, there was no prepared agenda, nor a procedure upon which all of the interested parties agreed. Although the Paris negotiators were aware of the shortcomings of the Congress of Vienna because of the very disorderly way in which that conference had developed, they nevertheless made the same mistake of incomplete preparation. The Paris Peace Conference was not institutionalized, unlike the League of Nations that it produced, let alone the United Nations that we have today, or the African Union, European Union, Association of South-East Asian Nations, Organization of American States, or the North Atlantic Treaty Organization. Whatever the differences between these international organizations, with the European Union being far more institutionalized than the African Union, they at least have a fixed set of rules and regulations, thereby protecting the negotiation processes inside their institutions against too much volatility.

The Paris Peace Conference had to do without this, with the consequence of great ups and downs. On 13 January 1919, the representatives of France, Britain, the United States, Italy and Japan formed the 'Council of Ten' (also referred to as the 'Supreme Council') as it had two representatives from each of the states, namely the government leader as well as the minister of foreign affairs. In March 1919, the negotiations became more difficult and more intense, and the Supreme Council reduced itself to the 'Council of Four', consisting of US President Woodrow Wilson, and Prime Minsters Clemenceau of France, Lloyd George of Britain and Orlando of Italy. Prime Minister Orlando did not play an important role, however, and the real negotiations became truly trilateral. The Council met on a daily basis, using English and French as their languages of negotiation and French and English were also decided upon as the languages of the official documents. Not only were the ministers of foreign affairs of the four countries kept at bay, but so were the Japanese and their head of delegation, Marquis Saionji Kinmochi, a former Japanese prime minister. The rest of the negotiators of other concerned states had to wait until they were invited into the triangle to state their wishes and to try to negotiate them, although they were not allowed in as decision-makers. Therefore, the personalities of the 'big three' were the only ones with a decisive impact on the negotiation process (Sharp, 2008).

The Outer Ring

The most concerned of the other countries, besides those represented in the 'Supreme Council', were the countries of the Central Powers that had lost the war: Germany; Austria and Hungary; the Ottoman Empire; and Bulgaria. The most important of these, Germany, was seen as the real evil and therefore kept out of the discussion until the very end. The Germans were in no way involved in the negotiations, and were given a document to sign during the concluding weeks of the conference, with hardly any possibility of changing it. The victors were a little more forthcoming to the other defeated members of the Central Alliance. One of the former allies of the victorious Entente, Bolshevik Russia, was also kept out and had anyway no inclination to join the negotiations with the 'capitalist' countries of the West. Poland and Romania, however, profited from the West's fear of communist Russia, by having their claims rewarded in order to create a bulwark against the emerging USSR. The other successor states of the former Austrian–Hungarian Empire also fared well: Czechoslovakia; and Yugoslavia (that is, the Kingdom of the Serbs, Croats and Slovenes). Belgium and Greece could take their spoils and so could the British Dominions, South Africa, Australia, and to some extent Canada. China, Ireland, the Arabs and the Zionists were basically ignored, as were others, such as the Latin American countries and Siam (now Thailand) (MacMillan, 2001: 5).

Several of the representatives of these countries in the outer circle, however, were reasonably influential, partly because of the need of the big three to have a second layer of involved states to help to stabilize the whole process. Big powers need middle powers to help control the smaller powers. The middle powers will then 'borrow' power from the dominant nations, disciplining the host of small states in the international system. Of the six countries that were allied to the 'Victorious Three', Poland was first, as it was after all the only major power in Europe that had been washed from the map more than a century before, but that now had to perform an important function in the post-war system as a buffer between Germany and Russia. Whatever the Allies wanted with Poland, Polish General Josef Pilsudski created his own reality by defeating the Red Army outside Warsaw in August 1920, and thereby creating a large Poland including substantial Ukrainian and other minorities. Romania sent Ion Bratianu to Paris, a chief spokesman for the ideal of a greater Romania. Bratianu managed this by blackmailing the Allies with the Soviet threat, as well as by creating new realities on the ground, as Poland did. He was backed up by the assertive Romanian Queen Marie, who travelled to Paris to court the Big Three. The Czechs, who now controlled the heartland of Austria–Hungary's industrial potential, could easily take the spoils as well: Hungary's Slovakia; and Ruthenia. The Czech leaders, Eduard Benes and Thomas Masaryk, managed to build a democratic state in the heart of Europe – quite an exception. The charming and diplomatic Benes, representing the Czech Republic in Paris, was helped enormously by the delays in decision-making, which gave his country the opportunity to annex regions with large Hungarian and Ukrainian minorities (MacMillan, 2001: 240–242). Austria, which was completely dismembered, remained alive as an orphan that was cut off from the 'German Fatherland' until the Second World War, when it tried to settle its identity, with two civil wars as a consequence.

Although at odds with each other, the Serbs – represented by Nikolá Pasic – and the Croats – by Ante Trumbic – were overtaken by realities when Prince Alexander of Serbia proclaimed the Kingdom of Serbs, Croats and Slovenes, including Bosnia,

Montenegro, Macedonia and Kosovo, and occupying the Banat in the process. Hungary became independent, sent the communist leader Béla Kun to Paris, but lost most of its territory in the wars against Romania in 1919, just after the end of the so-called 'Great War'. Alexander Stamboliski, the Bulgarian Prime Minister, did what he could in Paris, but Bulgaria was diminished to its core, be it less savagely than in Hungary. The Greeks, who sent Prime Minister Venizelos to Paris, managed to keep the territories that it had conquered during the war, expanding even to Eastern Thrace and Smyrna, which were lost when Atatürk drove them out of Turkey a few years later. The Ottoman Empire, which collapsed like Austria–Hungary, successfully regained its lost territories in Anatolia, Kurdistan and Thrace after the Turkish war of independence. China, which was represented by Prime Minister Lou Tseng-Tsiang, refused to sign the Treaty of Versailles, as the former German territory of Shandong – occupied by the Japanese – was not returned to the Middle Kingdom. China was the only participating country that did not sign.

Belgium received minor compensations for its enormous losses in lives and goods, and the Dominions remained in the British Empire, but received a higher status and were allowed separate membership of the League of Nations. Some of the Dominions, such as South Africa and Australia, could expand their reach, being enlarged with former German colonies as 'trust territories'.

Germany, meanwhile, was a special case (MacMillan, 2001: 492–493). It lost its colonies, its fleet, big chunks of its territory, and it had to pay huge reparations. Count Ulrich von Brockdorff-Rantzau led the German delegation at the signing ceremony at Versailles on 29 April 1919. The delegation was kept waiting for several days before it received the terms, and had only a few days to respond. The *Diktat* was born.

The Inner Ring

There were, of course, others inside the delegations of the Big Three who exerted influence on their leaders, although the overall impression remains that French Prime Minister Georges Clemenceau, British Prime Minister David Lloyd George and President of the United States Woodrow Wilson were much more influenced by their own personality and the personality of their co-decision-makers than by their foreign ministers, advisers, or minute-takers, etc. Before turning to the personalities of the main decision-makers, the seven most important players in the inner circle around the Supreme Council will have to be listed in alphabetical order (Duke International Security Conference, 2005: 1–10): Alfred Balfour, member of the British delegation and foreign minister during the Great War, was seen as having a thoughtful demeanour that proved a balance to Lloyd George's boisterous, charismatic style. Count Macchi di Cellere, the Italian Ambassador in Washington DC, who worked closely with President Wilson, tolerated no disrespect, whether by action or by word, towards his country or its representatives. Edward House was the most important and loyal adviser to US President Wilson, and worked well with Clemenceau and Balfour, but felt that Wilson could not effectively administer negotiations and agree to peace successfully. He strongly discouraged the President's decision to attend the conference and had hopes of leading the American delegation in Paris himself. John Maynard Keynes was the leading economist of the British Treasury Department, and saw Wilson as the only person with the moral authority to save Europe from another self-destructive war. Robert Lansing was former US Secretary of State to President Wilson,

and also wanted to be head of delegation, making President Wilson and Colonel House suspicious of his motives, which tainted their relations through the rest of the conference. French Foreign Minister Stephan Pichon's most important asset was his diplomatic skill, as he was skilled at finding points of agreement between negotiating parties and at gaining favourable compromises. Finally, Baron Sidney Sonnino, Minister of Foreign Affairs of Italy, had little belief in the concept of the League of Nations or any other Wilsonian ideals, and had an extremely negative attitude towards the French.

Of the main decision-makers, French Prime Minister Clemenceau, who presided over the conference, will be discussed first. A provincial French medical doctor and shrewd negotiator, he was nicknamed 'the Tiger'. It was said that 'he comes from a family of wolves', which did not mean that he was estranged from his own feelings, as 'when he heard that the Germans had agreed to an armistice […] he put his head in his hands and wept' (MacMillan, 2001: 38–39). Clemenceau's main drive was the interests of France and, above all, his hatred of the Germans, which had been kindled by the Franco–German War over 40 years earlier. This hatred obviously blinded him to solutions that might not later have sparked the resentment of the Germans, which was one of the main inducements of the Second World War. As Machiavelli once said, a statesman should always avoid creating resentment among his adversaries. This obsession with his eastern neighbour made Clemenceau open the Paris Conference on the day of the anniversary of the coronation of Wilhelm II in Versailles and to close it with the formal signing of the treaties in the Hall of Mirrors in Versailles, where the Prussian King had been crowned Emperor of Germany in 1871. His hatred also induced Clemenceau to occupy the Rhineland and the Saarland and to demand enormous reparations, which caused the economic downfall of the democratic Weimar Republic with its unstable coalition governments. He ignored voices in the French government against these measures, including from one of his young assistants in that government, Jean Monnet. The time was not yet ripe for cooperation, just for competition, or, better, domination and oppression.

Clemenceau was politically isolated, so he had to rely on himself and his closest friends. He did, however, have a good relationship with the French military and the French press. His frictions were with parliament. The newly elected Chamber of Deputies of the French National Assembly was hostile towards him, as he kept the parliamentarians out of the peace talks. His main struggle, however, was with France's President Raymond Poincaré. Clemenceau and Poincaré disliked each other intensely. According to the President, Prime Minister Clemenceau was a 'Madman […] vain man' (MacMillan, 2001: 40), as he wrote in his diary. Clemenceau's relationship with his two direct co-negotiators was not too bad, but was not too good either. Wilson and Lloyd George had much more contact with each other than with Clemenceau. Lloyd George saw the French prime minister as being a 'disagreeable and rather bad tempered old savage' (MacMillan, 2001: 43). For his part, Clemenceau mistrusted Lloyd George, seeing him as unreliable, while he regarded Wilson as a naïve man whose ideas about self-determination would produce a powder keg in the new Europe. Although Clemenceau presided over the negotiation sessions with authority, he could turn savage, as he regularly did if the negotiations reached stalemate. He literally created hurting stalemates by shouting and storming out of the negotiation room. Whether this was pure tactic, or indeed a genuine emotional rage, is unknown, but it could have been both.

Lloyd George seemed to love devious methods. 'He was a politician of formulae rather than principles, […] quick-witted and voluble – the septuagenarian Clemenceau lamented '*si je pouvais pisser comme Lloyd George parle*' – his adroitness in debate was sharpened by long practice and by unconcern for self-contradiction' (Pearton, 1993: 73). One is tempted to link this to the opinions about British negotiation style: highly effective but quite unreliable, and perhaps therefore so successful in reaching the desired results in the British interests. While training British civil servants for their presidency of the European Union, trainers observed the British diplomatic way of pragmatically dealing with the process of international negotiation, while striving without much scruple for an outcome that is favourable to the United Kingdom (Hemery and Meerts, 2006). The British prime minister seemed to fit into his English culture perfectly. The question then arises of to what extent his attitude was a personal or a cultural characteristic. As was observed with Clemenceau, the answer is probably both. Lloyd George was not quite aware of the European issues and shared this lack of awareness with the British main negotiator at the Congress of Vienna in 1814–1815, Lord Castlereagh. He was careless with appointments, could be quite ruthless in attempts to prevail over others, was of a domineering character, and had a problem in personal bonding. At the same time, however, he could be extraordinarily persuasive and charming – again, the true stereotype of the typical British diplomatist. During the negotiations, Lloyd George tried to balance Wilson and Clemenceau, and when asked whether he thought he had been successful, he answered that he thought he had done well, being seated between 'Jesus Christ and Napoleon'.

According to 'Napoleon' (that is, Clemenceau), Lloyd George was 'devious and untrustworthy', 'shockingly ignorant', while 'all arguments were good to him [Lloyd George] when he wishes to win a case and, if necessary, he uses the next day arguments which he had rejected and refuted the previous day', while to Wilson, Lloyd George simply 'lacked principle' (MacMillan, 2001: 41, 43 and 48):

> He was a politician of formulae rather than principles. He preferred oral to written agreements. He did not command universal trust, […] had an unconcern for self-contradiction. He made decisions on grounds of authority to act at once […] His greatest weakness, namely the lack of detailed background in foreign affairs […] led him blithely to discuss the problem of Silesia in the belief that he was settling the fate of a province in Asia Minor (Pearton, 1993: 73).

(That *villayet* was obviously Cilicia in south-eastern Turkey, rather than Silesia, the region in Central Europe.) His short-sightedness did not preclude his far-sightedness, however: 'after the [signing] ceremony, Lloyd George commented presciently that "we shall have to do the whole thing over again in 25 years at three times the cost"' (Reynolds, 2007: 30) – he was exactly right. Like President Nixon and Henry Kissinger in their dealings with the Soviets and the People's Republic of China, Lloyd George did not consult the Foreign Office, which – just like in the cases of Nixon and Kissinger – boomeranged, as serious oversights could not be corrected by the experts. In conclusion, 'He was universally respected for his boundless energy and strong work ethic, but his bluntness and sharp

tongue endeared him to few people. Nevertheless, he was very popular among the British people and politicians of both parties' (Duke International Security Conference, 2005: 3).

Finally, we come to Woodrow Wilson, perhaps the most complicated of the three main negotiators (Schulte Nordholt, 1992). He was seen as a hypochondriac professional academic, and as having a hard time understanding the *Realpolitik* of the epoch. His most important contribution was the (in)famous fourteen points, including the creation of a League of Nations of which the United States was not going to be a member. He was an idealist, who thought of himself as being morally right. According to Clemenceau, 'talking to Wilson is something like talking to Jesus Christ. In public Wilson was stiff and formal, but with his intimates he was charming and even playful. He was usually in perfect control of himself, but during the Peace Conference he frequently lost control of his temper' (MacMillan, 2001: 15 and 26):

> He became mesmerized by the strength and neatness of the phrases that he devised. […] He regarded himself as a prophet designated to bring light to a dark world. Yet, if we read again the tremendous sermons that he delivered during 1918, we shall find in them the seeds of the jungle of chaos that today impedes and almost obliterates the processes of rational negotiation. He failed to realize that the public is bored by foreign affairs until a crisis arises; and that then it is guided by feelings rather than by thoughts (Nicolson, 1998: 85 and 87).

Meanwhile,

> His spiritual arrogance, the hard but narrow texture of his mind, is well illustrated by his apparent unawareness of political reality coupled with distressing awareness of party reality (and public opinion, and therefore) [...] his sensitiveness to press criticism, and especially to ridicule. As happens with most theocrats, Woodrow Wilson was a solitary and exclusive man (Nicolson, 1933: 199–201).

Lloyd George had his own problems with Wilson. Although he had much more intensive contact with Wilson than with Clemenceau, this was for reasons of interests, not of personality: 'Lloyd George felt that ultimately, he could always do business with Clemenceau, but Wilson's insensitivity and dogmatism made him absolutely impossible in negotiations' (Pearton, 1993: 86).

Wilson's aim was to avoid another world war, but his concept of world peace did not last and did not work. The idea of self-determination, which was not even clear to Wilson himself, did spark a series of minor conflicts during the interbellum period. Self-determination is not at all equivalent to independence, but to the masses and the politicians who manipulated them, it was interpreted as such. Perception determines reality, and so many conflicts were born. Why independence for some and not for all? Wilson's own interpretation of self-determination, being the right of peoples to decide on their own form of government, was not concrete enough to preclude any other vision that might be at odds with it. Wilson was far from being straight in the implementation of his vision:

> On reaching Paris, President Wilson quickly decided that by 'diplomacy' he had not meant 'negotiation', but only the results of that negotiation, namely treaties. He decided that the Phrases 'openly arrived at' and 'in the public view' were relative only and contained nothing that need deter him from conduction of prolonged secret negotiations with Lloyd George and Clemenceau [...] The general public, however, [...] continued to assume that by 'diplomacy' was meant both policy and negotiation. This is perhaps the most confusing of all fallacies that we owe to President Wilson (Nicolson, 1998: 85–86).

Finally, we come to the fourth member of the 'Supreme Council', the Italian Prime Minister Vittorio Emanuele Orlando. A professor of Law, diplomat and politician, Orlando had striven for Italy to leave the bloc of the Central Powers and join the Entente. In doing so, Italy suffered severe losses, but gained South Tyrol, Trieste and some other minor territories. This was perceived as a great injustice and gave rise to problems with Yugoslavia about Istria. As Orlando did not get what he wanted, and as his government was weakened beyond measure by his failure to get what he wanted, he left the conference in April 1919. Orlando saw himself and Italy as a victim of the Big Three: 'I am indeed a new Christ [...] and must suffer my passion for the salvation of my country' (MacMillan, 2001: 306). He allowed Italy's conservative Foreign Minister Sidney Sonnino to play an important role in Paris and he resigned as prime minister before the signing of the Treaty. Orlando later supported Mussolini's rise to power and was connected to the Mafia during his entire political career.

As the Germans were left out of the actual negotiation process, there is not much to say about the role of 'egotiation' on their part. We do know, however, about their anger as a consequence of humiliation. They obviously perceived the hatred on the side of the entente. 'Brockdorf-Rantzau [the German chief negotiator] [...] chose to remain seated [...] He began by registering the victor's intense and passionate hatred for the vanquished' (Mayer, 1968: 767). The other power to be left out, the Soviet Union, was 'neither ally nor enemy. [... T]his regime was feared not because it ruled just then over a powerful nation, but because it was the carrier of highly contagious ideas' (Mayer, 1968: 285).

Opening and Closure of the Second World War

To categorize negotiations on the basis of the number of participants is useful, but also difficult. It is useful because the number of participants has a great impact on the flow of the negotiation process: the more actors, the more complexity, but also the more richness. The struggle with complexity is the main issue in multilateral bargaining. How can one manage the chaos? One needs good procedures, rules and regulations, effective chairs, a strong secretariat, and negotiators who are well aware of the organization's culture to set the boundaries and inner structure of the conference, etc. The management of complexity might be the main skill that negotiators of conference diplomacy have to possess; their advantage will be the choices that they have. Multilateral negotiation does generate many obstacles, but a lot of opportunities as well: multi-party, multi-issue, a multitude of problems as well as solutions, plus partial solutions for the power problem. It is, after all, easier to counterbalance the power of the powerful if many of them are present. Coalitions

will ease the differences in strength and give the weaker parties a tool in playing the strong off against each other. The advantage of bilateral or trilateral bargaining is its transparency and speed. Multilateral negotiations tend to be slow, although there might be more assured outcomes. Bi- or trilateral negotiations could be speedy, but there might be more less-assured outcomes. It is also more difficult to deal with the power problem, but procedures are less of an issue and the directness allows for more personal influence. In bi- or trilateral negotiations, as well as in multilateral negotiation, much remains the same as well: the question of mandates, and the relationship with the constituency, etc.

This chapter postulates that the smaller the circle of negotiators, the greater the impact of power and personality. What, however, about prestige? What about 'egotiation'? One could expect them to be more of a problem than in multilateral negotiations, because the negotiators are, after all, more directly connected in small forums. The counter-argument would be that the defence of prestige, and thereby the risk of 'egotiation', is less if the negotiator is not exposed to many colleagues, let alone to public opinion. This is why secret and back-channel negotiations are often the preferred mode. It is also less because it is much easier for negotiators who operate in small groups to influence each other and thereby to put a limit to the tendency to 'egotiate'. The downside is groupthink. The risk of groupthink is much bigger than in multilateral negotiation processes. Although the number of parties does influence the people, power structure, flow of the process and the product of their work, it remains difficult to link this fully with maximized-party and minimized-party negotiations. After all, talks between two, three, four or five negotiators are essential for progress in multilateral meetings. While we have to characterize the Paris Peace Conference as multilateral, we also saw that in reality it was very much a trilateral process. However, this trilateral negotiation also had multilateral aspects, as advisers in the Inner Circle were quite involved and influential, actors in the Outer Circle did exert some influence, and the constituency back home – as well as public opinion – was part of the overall flow as well. In other words, bi- and trilateral negotiations have a multilateral dimension and multilateral talks are dependent on bi- and trilateral meetings within them. It seems, however, that the essence of the process of international negotiation can only be handled in groups of up to five actors, which we might label as the 'core caucus' of the negotiation.

Munich, 1938

The Munich negotiation process can perhaps be termed the mother of catastrophic negotiation processes. It was seen by Western leaders as a huge mistake: Britain and France selling out Czechoslovakia to Adolf Hitler, and thereby opening the road for German hegemony of Eastern Europe up to the borders of the Soviet Union. This is true, although the question remains of what the alternatives would have been. Adolf Hitler himself was not as happy with the outcome of the Munich conference as one would presume:

> *[ ] er wollte [ ] alles, was ihm vorschwebte, zu seinem Lebzeiten schaffen. Er hatte keine Zeit. Das Münchener Abkommen, in dem Freund und Feind mit Recht einen märchenhaften Triumph Hitlers sahen, empfand er selbst geradezu als Niederlage: Es war nicht nach seinem Willen gegangen, er hatte aus der Hand Englands und Frankreichs entgegennehmen müssen, was er lieber mit Gewalt genommen hätte,*

> *und er hatte Zeit verloren. So erzwang er 1939 den Krieg, der ihm 1938 entgangen war (Haffner, 2011: 125–126).*

(Hitler wanted to implement his ideas during his lifetime. He was in a hurry and he would have preferred to start the war in 1938 but the Munich Agreement prevented this).

Hitler felt restrained by the Munich agreement and was taken by surprise by the peace efforts of British Prime Minister Neville Chamberlain:

> By the summer of 1938, Hitler was convinced that the Czech problem had to be resolved by war: this had become for him a test of personality. At the same time, across the North Sea, a mirror-image situation was developing: for Chamberlain the search for peace had become almost an ego trip' (Reynolds, 2007: 41).

Chamberlain's determination to be successful and to save Britain and the world from disaster had its root in his family history. His father, Joseph, was one of the heroes of liberal politics in the nineteenth century, although he never became prime minster. The son wanted to do better than the father and he was ready to take the necessary risks for that, in competition with his half-brother Austin: 'As the marginal man in this fiercely proud family, Neville would always be less than human if he did not sense a chance to outdo his father and his brother in the battle for reputation. [… He] was always measuring himself against his father and brother' (Reynolds, 2007: 50). In order not to be hindered in his endeavour concerning Adolf Hitler, he ignored his Foreign Minister Anthony Eden, who resigned because he felt by-passed. Chamberlain's personal mission took off, and nobody could stop him but reality. He began to over-estimate himself and told his sisters: 'now I have only to raise a finger and the whole face of Europe is changed'. Acknowledging the publication of H.A.L. Fisher's new *History of Europe* in March 1938, he replied: 'At the present moment I am too busy trying to make the history of Europe to read about it' (Reynolds, 2007: 49).

Without consulting the British Foreign Office, Chamberlain offered to visit Hitler in his residence 'the Berghof' on the Obersalzberg above the town of Berchtesgaden, although the German Foreign Ministry had been fully engaged through its Foreign Minister Joachim von Ribbentrop from the very first moment. It was an unprecedented step, to go to the wolf's lair, and Chamberlain did not even take an interpreter with him. Dr Paul Schmidt, interpreter of the German Foreign Ministry, acted as interpreter. This, of course, could and did lead to miscommunications, as Chamberlain could not check on Schmidt's words. At first he did not even receive a transcript of the minutes made by Schmidt. The talks lasted for one day and were a mere exchange of opinions and arguments. They nevertheless raised expectations of a peaceful solution, as Hitler showed his readiness to discuss the contentious issues in something that looked like a dialogue. As history showed later, however, this dialogue was not for real; nor were the follow-up talks in Bad Godesberg. This second encounter was anyway much grimmer than the first. This time Chamberlain took his First Secretary Ivone Kirkpatrick, who spoke German fluently. Hitler did make some minor concessions, but in reality the British were eaten on the spot and Hitler got what he wanted on the question of the Sudeten Germans. The

meeting did not give any reason for optimism, and ended in an icy atmosphere (Reynolds, 2007: 75–80).

As a next step, Chamberlain proposed a four-power meeting, with the Italians and the French also present. This was very much welcomed by Italy's Benito Mussolini (known as the *Duce*), who feared that a German invasion of Czechoslovakia would further upset the balance of power between the Hitler's Third Reich and Mussolini's fascist Italy. Hitler thus invited the *Duce*, Prime Minister of France Édouard Daladier and Chamberlain to come to Munich. This was the third time in a row on German territory, and the Czechs were not invited. At the end of the meeting, Chamberlain and Hitler held a bilateral meeting about the issue of Anglo–German relations in the future, whose resolution was reluctantly undersigned by Hitler. It stated that 'We are resolved that the method of consultation shall be the method adopted to deal with any other questions that may concern our two countries, and we are determined to continue our efforts to remove possible sources of differences and thus to contribute to assure the peace of Europe' (Reynolds, 2007: 95). The meetings were prepared amateurishly and in that sense there is not much of a difference from the Paris Conference discussed earlier in this chapter, or for that matter the Congress of Vienna in 1814–1815. There were no briefing papers, no position papers, no planning, no strategy and no profiles of the main negotiators – nothing of the kind. In such a situation, the danger of so-called 'salami tactics' being used by the other side is immanent. Without overall planning, it is difficult to trace the trade-offs, and one side might walk off with the biggest part of the cake because it got more in every distributive bargaining, precluding integrative win–win outcomes. 'In short, Hitler was a much more effective negotiator than Chamberlain, but he never wanted to negotiate, whereas Chamberlain, a less skilled tactician, got what he really wanted – peace not war' (Reynolds, 2007: 99). In other words, Chamberlain's need for a settlement was much greater than Hitler's, and by being the '*demandeur*', he had to concede much more than his opponent. Chamberlain never openly regretted his solo tour, but he was entrapped in his own process: 'this melancholic and "physically broken man" (p. 434) persisted in his stubborn defiance and legendary self-righteousness to the bitter end' (Bátonyi, 2007).

What about the personality and the position of Adolf Hitler? While Chamberlain had a short-term plan of preventing war, Hitler had a long-term strategy: dominating Europe in his lifetime (Reynolds, 2007: 100). In order to do this he had to swallow Austria and Czechoslovakia in a peaceful way in order to be able to attack Poland and thereby dominate the whole of Eastern Europe up to the Soviet border. The final goal was to conquer Russia, but in order to do so, he had to subdue France first in order to overcome the classic German dilemma of a war on two fronts. Britain, it was thought, would then be so isolated that it would have to accept German hegemony over Europe – actually, it would be more apt to say to accept Hitler as the hegemon. For Hitler, the German people were merely tools in his conquest and the fulfilment of his second aim: the destruction of the Jewish people on the European continent. After the German failure to take Moscow, Hitler's dream of a pan-European Third Reich dominated by the 'Germanic race' withered away, leaving him with his second target: to sweep away the 'Semitic race'. He thought in terms of peoples, not of states. Actually, he destroyed the German state-system, in order not to be bothered by laws and institutions. Everything should circle around '*der Führer*', and thus the state had to wither away, like in Marxism, but for reasons of

autocracy, not of equality. He was a criminal, political Darwinist, with a complete lack of empathy – unable to make intimate friends among men and women – who did not allow for much of a compromise. His tool was war, not negotiation. Like Chamberlain, he grossly overestimated himself until the bitter end (Haffner, 2011: 13).

Yalta, 1945

While Munich stood at the beginning of the Second World War, Yalta marked the end. This exclusive trilateral negotiation by US President Franklin D. Roosevelt (FDR), Soviet Premier Joseph Stalin and British Prime Minister Winston Churchill can be seen as the real closure negotiation of the Second World War. Although the Potsdam Conference in July and August 1945 was the last wartime summit, it did not change the foundations laid in Yalta in February 1945. The leaders' personalities played a prominent role:

> Of the three, Roosevelt probably had the greatest strengths and the least coherent conception of how to utilize them. Roosevelt was […] jaunty, self-possessed, confident, cheerful and capable of inspiring trust and affection. [However,] he held no well-defined or sophisticated world view […] Roosevelt saw himself as a realistic Wilsonian (Buhite, 1986: 11–12).

Moreover,

> The President was a 'feely' politician, operating on a blend of intuition and experience, and his approach shaped his views of both Hitler and Stalin. FDR knew Germany well, or at least the Kaiser's Germany before the First World War. Speaking to [US] senators in January 1939, Roosevelt described the German leader as a 'wild man', 'walking up and down the room for hours on end', 'pounding the table and making speeches'. 'We should call him a "nut"'. The contest between Roosevelt and Hitler became very personal, whereas Churchill's animus was directed at German militarism and autocracy (Reynolds, 2007: 108–109).

This brings us to Churchill:

> Churchill's world view rose from his concern that a single power, regardless of its ideology, might dominate the European continent. [He was] a man of great courage. […] especially his ability to use the language, stood unequalled among his countrymen […] What he possessed in learning and eloquence, he lacked in patience. He would be terribly impressed with his own performance, and then become bored, refuse to hear responses […] A better negotiator than Roosevelt, he was still surprisingly ill prepared. While voluble and emotional, at the same time he was insufficiently persistent. Churchill also suffered bouts of extreme depression, which tended to immobilize him. Many men of great prominence, whose aggressive behavior allows them to perform brilliantly toward opponents, turn their hostility inward once a foe is vanquished or an issue resolved. A man of massive ego […] 'Of course I am an egotist', he said to Clement Attlee. 'Where do you get if you aren't?' He had the egotist concept of leadership (Buhite, 1986: 14–16).

As for Stalin, it has been observed that '*Joseph V. Stalin [… était] un homme parvenu par les moyens les plus pervers au sommet de la puissance et n'y ayant pas trouvé ce qu'il en attendait, un homme totalement désabusé*'[1] (Laloy, 1988: 15). Moreover,

> Stalin's style was that of recluse. The author of a psychological portrait of Stalin suggests that he was the quintessential paranoid personality. A vain, power-hungry man with a keen sense of his own inferiority, he harbored intense jealousies and a mean, vindictive spirit, […] mastering the art of manipulating people and laying them off against each other for his own benefit (Buhite, 1986: 17).

In addition, 'Although Stalin had a sharp mind and a prodigious memory, he had always had an inferiority complex about his lack of formal education; he was also deeply xenophobic' (Reynolds, 2007: 115). 'His greatest strength in Yalta lay in the Russian contribution to the war effort and the positioning of the Soviet forces' (Buhite, 1986: 18). It was much more Roosevelt than Churchill who wanted to keep Stalin on board the alliance, also because Roosevelt still believed at Yalta that he needed the Russian war effort in the Pacific to underpin the American struggle against Japan: '*Yalta est donc l'effort ultime de Roosevelt pour préserver l'entente avec l'URSS*'[2] (Laloy, 1988: 9).

During the meeting, Stalin had the advantage of being on his home front, while Roosevelt in particular had to travel a long way and suffered increasingly from his weak health. Even Churchill arrived worn out by the long war years:

> Summitry requires quick wits and mental stamina. Arriving at Yalta, neither Churchill nor Roosevelt seemed to be at their best. Both he and Roosevelt listened intently to Stalin. Churchill watched the Soviet leader even when his words were being translated. […] Conference diplomacy is about resolving differences through an interlocking set of compromises and trade-offs, in which no party gains everything but all get something and concede something. This is what happened at Yalta. Over the first two days, the Big Three brought most of the diplomatic issues to the table. From Wednesday, February 6, the deals began to be made (Reynolds, 2007: 122–125).

The atmosphere seems to have been amicable, but the Soviet leader's position precluded many of the decisions that were taken. The facts on the ground were decisive, but this did not mean that emotions were absent:

> Of the two leaders [Roosevelt and Churchill], Churchill was more hard-line and often highly emotional. The only point when Roosevelt lost his cool was when

1 Author's translation: 'Joseph V. Stalin [… was] a man who had by the most perverse means reached the summit of power and, not having found there what he was expecting, was a totally disillusioned man'.

2 Author's translation: 'Yalta is thus Roosevelt's ultimate effort to preserve the Entente with the USSR'.

> Stalin protested about peace feelers made by the German army in Italy to US emissaries in Bern. […] He was furious – face flushed, eyes flushing (Reynolds, 2007: 150–151).

Roosevelt's answer to Stalin was, according to Churchill, 'about the hottest thing I have ever seen so far in diplomatic intercourse' (Reynolds, 2007: 151). It worked, because Stalin withdrew his complaint: 'Stalin was indeed a skilful negotiator, letting the others do the talking and saving his succinct remarks for the right moment. Nevertheless, Churchill's more bombastic approach should not be underrated: it wore down the other two over France and German reparation' (Reynolds, 2007: 159). Nevertheless, after Yalta his sometimes undiplomatic behaviour pushed him slowly but truly to the sidelines:

> When in July 1954 Churchill sent a message to Moscow, without consulting either the President [Eisenhower] or his own Cabinet, suggesting a bilateral 'friendly Meeting with no agenda', he was rebuffed by both Malenkov and Eisenhower. From then onwards, the pressure from colleagues for his resignation was never relaxed (Blake, 1998: 99).

During the Cold War

To negotiate during the Cold War was not an easy task. With the threat of nuclear destruction, both the USSR and the United States became increasingly aware of the necessity to start talking, to create a safety net in case of unintended escalation and the danger of unleashing their nuclear arsenals. While it was feasible during the First and Second World Wars to have a victorious party (not to belittle those wars' disastrous consequences), a Third World War would certainly end in catastrophe for all of the parties concerned: a lose–lose outcome. Negotiation, then, was the only way out. The first case in this section deals with a very difficult, but serious, attempt to bridge the gap between the two superpowers. It failed. The second and the third cases were already more successful and opened the road to the fourth case, which was indeed a success. Although a very precarious and bumpy process, it laid the foundations for the end of the Cold War half a decade later. With this, the chain of events that started with the Balkan Wars at the beginning of the twentieth Century came to an end with the inner-Yugoslav/Balkan War resulting from the implosion of the Federal Socialist Republic of Yugoslavia – one century from a Balkans to Balkans crisis, with negotiation processes trying to prevent, manage and end the use of violence as an instrument in international relations in and around the European continent.

Vienna, 1961

US President John F. Kennedy and Soviet Premier Nikita Khrushchev were the egos clashing at the summit meeting in Vienna in 1961. Khrushchev appeared to be the dominant figure in their encounters, being much more experienced than Kennedy. Actually, this took Kennedy by surprise and the Soviet leader exploited his situational advantage in a very skilful way by turning the negotiation into an ideological show of force. Khrushchev, from Ukrainian peasant ancestors and lacking serious formal education, appeared to be a

ruthless negotiator, confirming the stereotypes about Russian bargaining styles (Meerts, 2009c: 4–8):

> Khrushchev retained a huge inferiority complex about his lack of education and culture and was always alert to condescension, real or imagined, at home and abroad. Stalin, too, had such a complex, but Khrushchev was not as good at concealing it. Nor, unlike his patron, could Khrushchev control his explosive temper: within seconds he could shift from good humor to foul-mouthed abuse. At their first meeting in Geneva in 1955, the Soviet leader seemed a frankly 'obscene figure' to the elegant, urban Macmillan [the UK Prime Minister], who wondered if 'this fat, vulgar man, with his pig eyes and his ceaseless flow of talk' could really be the head of a great country' (Reynolds, 2007: 169).

Khrushchev's attitude was one of the reasons for his split with Mao Zedong (Reynolds, 2007: 170), and it gave John F. Kennedy a very hard time.

Kennedy, a believer in negotiation as a tool in international relations, also saw the limits of this instrument. His famous saying that one should never negotiate out of fear, but nevertheless never fear to negotiate, is a case in point. Kennedy had a complicated family background. Like Chamberlain, he had to struggle with a dominant father-figure, Joseph Kennedy, and an elder brother who was meant to be a politician but who died at too young an age, while his other brothers were groomed to play an important role in US politics as well. Given the Irish and Roman Catholic background of the family, there were also aspects of emancipation involved, perhaps not as much as in the case of Khrushchev – after all, Kennedy did attend Harvard Law School – but nevertheless. According to Thomas Mongar, ego structures are of two basic types, namely 'satellizing' and deviant. 'Satellizing' occurs when a child is intrinsically valued, but Mongar adds:

> Alternatively, if the child thinks he has been extrinsically valued, he will protect his omnipotent self-image (and) will attempt to increase his capacity to perform to meet the burden of vastly inflated aspirations. Kennedy's 'ego profile' is almost a perfect representation of the deviant structure. Deflation of aspiration was ruled out because of the neurotic pressures for achievement from the family. The only remaining alternative was a massive effort to inflate his performance capacities, which required a strategy of managing the symptoms of his neurosis and turning his weaknesses into competitive assets (Mongar, 1969: 206–208).

Notwithstanding – or perhaps because of his chronic back problems – Kennedy managed to become US President. Mongar gives us one clear example of 'egotiation': 'Kennedy's value choice in the Cuban missile crisis […] was conceived as an attempt to restore his self-esteem rather than to correct an implausible disequilibrium in the nuclear balance of power' (Mongar, 1969: 225). Perhaps Mongar is exaggerating, as there were of course many other variables involved and it is difficult, if not impossible, to measure their relative weight, but his insights are nevertheless useful food for thought.

In May 1961, Bobby Kennedy, John's younger brother, had a preparatory back-channel meeting with Georgi Bolshakov from the Soviet Embassy in Washington DC, a close friend

of Khrushchev's son-in-law. Events then started to roll, partly managed through official diplomatic channels by US Ambassador to the USSR Llewellyn Thompson and his Soviet counterpart Ambassador Mikhail Menshikov, and partly through the aforementioned back-channel, trying to overcome the two main obstacles: Berlin and Vietnam:

> Each leader was going with his own list of priorities and with a confidence that, if he played it tough, the other man would come around. Each had fundamental blind spots about his adversary. The world has moved a long way since the days of Hitler and Chamberlain – communications had been transformed and information was much fuller – yet the psychological barriers to summitry were much the same (Reynolds, 2007: 199).

The summit took place in Vienna from 3–4 June 1961. On the first day, Kennedy and Khrushchev met in the residence of the US Ambassador to Austria, surrounded by their staff. They exchanged ideological arguments about communism and capitalism, a debate in which the Soviet leader was much more versed that the President: 'the [US] ambassador was shaken that Kennedy seemed to be taking one hit after another from the Soviet leader. In an effort at rational discussion, the president had ended up on the defensive in an ideological argument, even conceding that the Bay of Pigs had been a misjudgment' (Reynolds, 2007: 203). On the second day, they met at the Soviet Embassy in Vienna. No progress was made and emotions rose, for example with Khrushchev's comparison of the death toll of the USSR and the United States during the Second World War. A face-to-face bilateral meeting – with only interpreters present – did not bring any progress.

Beijing and Moscow, 1972

Approximately ten years later, US President Richard Nixon was preparing for summitry with both Chinese leader Mao Zedong and Soviet Premier Leonid Brezhnev. 'Nixon entered office and was being pressured by the Congress and the media to turn rapidly to arms control negotiations with the Soviets' (Kissinger, 1994: 716). The Americans had learned from Vienna, and they prepared much more thoroughly through back-channel preparatory talks, in which US Security Adviser Henry Kissinger, played a decisive role, a role in which he himself was perfectly aware. In the run-up to the Moscow meeting, the Americans strengthened their position enormously by creating a 'best alternative to a negotiated agreement', the alternative being talks with Beijing before the Moscow summit was due. It was vital that the back-channel talks with the Chinese would not be leaked to the Soviet Union. Kissinger therefore had to act without consulting the US State Department. He flew to Pakistan and from there, in secret and with only a few security men, to Beijing. As in the case of Chamberlain's flight to Berchtesgaden to meet with Hitler in 1938, Kissinger did not take an interpreter with him. Kissinger conferred with Chinese Prime Minister Zhou Enlai for seventeen hours. He was duly impressed by the cultivated Zhou.

> As we now know, Zhou was treated by Mao as his round-the-clock diplomatic factotum, forced at times to grovel even more basely than Gromyko did before

> Khrushchev. In 1972 Mao denied Zhou treatment for bladder cancer lest his premier outlive him, and even refused to pass full diagnosis' (Reynolds, 2007: 240).

They decided that Nixon would fly to Beijing for a meeting with Mao before his summit in Moscow. The Kissinger mission upset the Russians so much that Nixon's hand in his negotiations with Brezhnev was substantially strengthened – one of the reasons why the Moscow meeting became a success.

Nixon was an unemotional and tough '*Real Politiker*'. Nevertheless, like any other human being, he has an Achilles' heel: jealousy. As it was in US interests to make the trip to Beijing known to the Soviets, Kissinger talked to the media extensively, taking the credit for the meeting with Zhou Enlai. President Nixon was furious and decided that he would not allow Kissinger the same media attention in the case of Moscow: 'Still chafing at Kissinger's self-promotion, Nixon stressed on numerous occasions during the flight that no one else must be in view when he and his wife descend from Air Force One. Just to make sure, a burly Secret Service agent blocked the aisle after they landed' (Reynolds, 2007: 243). Nixon negotiated with Zhou Enlai and paid a courtesy visit to Mao Zedong. So-called 'ping-pong diplomacy' was born. However, as the US State Department was only involved at the very last moment, while Secretary of State William Rogers was kept out of the talks with Zhou Enlai, Kissinger made two serious mistakes. He agreed to a wording in the final communiqué that was detrimental to Taiwan. He therefore had to renegotiate the communiqué, which could have been avoided if China experts had been involved in the drafting. Nixon was not amused.

Such a mistake was made again in the final joint statement after the Moscow meeting with Brezhnev, a few months after Beijing. Kissinger met Brezhnev in Moscow on 21 April 1972. Again, the US State Department had been left in the cold, but it was drawn in a little when Nixon finally flew to Moscow to talk to Brezhnev. The Soviets managed to slot the term 'peaceful coexistence' into the final communiqué, an ideological term that Kissinger did not value, as it meant a continued struggle between communism and capitalism and a final victory of the first made possible by the avoidance of war. The Kremlinologists of the US State Department were not allowed to participate in the drafting and so could not correct the text.

US Secretary of State William Rogers felt that Kissinger was 'deceitful, egotistical, arrogant, and insulting. Kissinger felt that Rogers was vain, uninformed, unable to keep a secret' (Reynolds, 2007: 246). Moreover,

> Shortly thereafter, we got our first taste of Henry Kissinger's backchannel diplomacy. […] Kissinger had effectively repudiated our initial […] proposals even before we offered them, telling [Soviet Ambassador to the United States] Dobrynin that if the Soviet Union preferred something more limited, he would be happy to entertain it. Knowing in advance the delegation's proposals were not backed at the top, the Soviets lost nothing by stalling. Weakness at lower levels is not that serious; those positions can be overruled. But weakness at the top leaves no recourse (Nitze, 1989: 309).

Interestingly enough, Kissinger was not very fond of Rogers either, and perhaps he shared this view with Nixon: 'Nixon said, Rogers was one of the toughest, most cold-eyed, self-centered, and ambitious men he had ever met' (Kissinger, 1979: 26). Actually, Kissinger blamed the Nixon administration, and thereby Rogers, for sabotaging back-channel negotiations: 'in the Nixon administration, the bureaucracy developed great skill at both leaking good news prematurely to gain credit and releasing bad news in a way that focused blame on the President' (Kissinger, 1979: 25).

Dobrynin himself had a more positive vision than Rogers on back-channel diplomacy, although he saw its limitations:

> There are certain requirements for the confidential channel to be effective. It has to be permanently available, and its immediate participants must possess a certain level of diplomatic and political experience and knowledge. Above all, the channel should never be used by any government for the purpose of misinformation. Of course, a diplomatic game is always being played, but deliberate misinformation is always inadmissible, for sooner or later it is going to be disclosed and the channel will lose all its value (Dobrynin, 1995: 94).

This can be summarized as: secrecy to the outside world, but no cheating to the inside world; which is good for the relationship between the negotiators, and bad for their relationship with their colleagues back home.

Kissinger found Brezhnev to be:

> […] very forceful, extremely nervous, highly unsubtle, quite intelligent but not of the class of the other leaders we have met. Brezhnev, as much as Nixon, wanted to portray himself as a political virtuoso and take political credit for the eventual agreement. For his part, Nixon was struck by Brezhnev's physical presence and sheer 'animal magnetism'. [… As] Kissinger put it in his memoirs, 'Given Nixon's feelings about who should get the credit, I doubt that he would have agreed if we had proposed [to bring the arms control delegations to Moscow to work in conjunction with the summit]. We shall never know because I did not put forward the idea, not uninfluenced by vanity and the desire to control the final negotiation.' Time magazine had made [Kissinger] and Nixon joint Men of the Year for 1972, much to the president's fury. Even Kissinger begged the editors not to do it. If Watergate had not exploded, Kissinger might well have been a casualty of Nixon's jealousy in the second term (Reynolds, 2007: 250, 268, 272 and 277).

Other personalities were involved, of course, such as President Nikolai Podgorny, Prime Minister Alexei Kosygin and Foreign Minister Andrei Gromyko on the Soviet side, but they did not play a decisive role.

On 22 May 1972, Nixon landed in Moscow for his summit with Brezhnev. They met alone, with interpreters but without Kissinger. Members of both delegations were to be included later. The atmosphere changed from moment to moment, like a rollercoaster, but in the end the two leaders arrived at a common understanding on matters such as the Strategic Arms Limitation Talks (SALT) and basic principles governing relations

between the two superpowers. Furthermore, they signed six bilateral agreements. Thus, 'The Moscow meeting was not seen as a contest between victors and losers, but as an understanding from which both sides gained' (Reynolds, 2007: 274).

Geneva, 1985

'Reagan believed that relations with the Soviet Union would improve if he could make them share his fear of nuclear Armageddon' (Kissinger, 1994: 768). In November 1985, Soviet Premier Mikhail Gorbachev and US President Ronald Reagan met in Geneva at a summit where they insulted each other, but also built a unique chemistry between them, as well as between their teams: 'The emotional outbursts had exposed each man's deepest convictions to the other and this would never have happened except at the summit' (Reynolds, 2007: 393). This negotiation in Geneva foreshadowed the end of the Cold War. Ronald Reagan was a Cold War-monger, but he was averse to nuclear weapons and wanted them out of the international security arena. Mikhail Gorbachev needed an end to the arms race with the Americans, as he needed the money for restructuring the Soviet Union and putting an end to its stagnating economy. Moreover, he feared a new arms race because of Reagan's Strategic Defense Initiative (SDI), the so-called 'Star Wars Program'. Just because Reagan did not believe in mutual assured destruction (MAD), he wanted to build a missile defence system, and this threatened the credibility of the Soviet potential to retaliate in the case of a US nuclear attack (Reynolds, 2007: 346). Both sides therefore had good reasons to negotiate and they did so in Geneva, starting on 19 November 1985 in Fleur d'Eau, where the Americans hosted the first session. The next day they met on the grounds of the Soviet mission. The two leaders had long face-to-face bilateral fireside talks, keeping their delegations at arm length. Although they had grave problems on content, their personal relationship evolved in such a way that they became tenacious about solving the problems between the two superpowers, if not right away, then at least in the future. They cooperated in forcing their delegations to make headway. For example,

> [Reagan] concluded that earlier leaders had not accomplished very much. So he suggested, with Gorbachev nodding in agreement, that the two of them should simply say 'To hell with the past – we'll do it our way and get something done.' When an angry [US Secretary of State George] Schultz interrupted coffee to complain that [Soviet Deputy Foreign Minister Georgy] Kornienko […] was blocking agreement on parts of the joint statement, Gorbachev said smilingly to Reagan: 'Let's put our foot down.' Each took his delegation aside. In fact the Soviet Leader leaned harder on his staff to sort things out (Reynolds, 2007: 381).

They both saw summitry as a process, not as a one-time event.

Gorbachev came from humble origins, but contrary to Stalin and Khrushchev, he had enjoyed an advanced education. He had, however, experienced traumatic events in his childhood. His grandfather suffered under the Stalinist purges, although he was a good and loyal communist. His father and elder brother were sent to the Front to fight the Nazis, and his brother never returned. Although Gorbachev was a true believer in Marxism–Leninism, he was pragmatic by nature (Gruyter, 1993). It was this attitude that brought him

close to Reagan, who was a pragmatic politician as well, notwithstanding his seemingly ideological conservative utterances. Reagan, with an optimistic view of life, was a team player. He thereby avoided the 'egotiation' mechanisms that bedevilled egotist loners such as Nixon and Kissinger. In an analysis of the speeches of Reagan, Walter Weintraub found that:

> As indicated by the high 'we' score [in his speeches], Reagan is the consummate team player, the chief spokesman for a group that reached consensus on the issues under discussion. Leaders of revolutionary movements use 'we' frequently and it's clear that Reagan sees himself very much as the head of a conservative crusade. He rarely took credit or blame for his administration's success and failures (Weintraub, 1986: 294).

The personalities of the leaders set a series of summits in motion, melting away the Cold War. It is important to note that the extraordinary understanding between Reagan and Gorbachev was quite exceptional. Reynolds notes that Reagan himself highlighted the importance of their special chemistry in his memoirs:

> In Moscow, Gorbachev told Nancy Reagan that he and her husband had 'a certain chemistry,' adding: 'It's very rare.' The president agreed, writing in his memoirs: 'Looking back now, it's clear there was a chemistry between Gorbachev and me that produced something very close to friendship.' [… However,] most leaders find it difficult to disentangle their country's national interests from their personal political goals. Yet it is essential to intuit these needs and goals, and it is even more vital to understand the other leader as a political animal, rather than merely a newfound 'friend.' The ultimate question, more political than diplomatic, is whether the leader feels that in the last resort he can afford to walk away empty-handed from the summit. Summitry is predicated on the idea that better personal relations can yield diplomatic benefits. This makes most leaders reluctant to have an open row at the summit [… Nevertheless,] lower-level negotiations between specialists are […] essential; they also allow the leader room to repudiate what has been tentatively agreed (Reynolds, 2007: 396 and 429–431).

In Conclusion

This chapter has observed the roles of political leaders in six negotiations around and during three major – mainly European – conflicts: two 'hot' wars in the first half of the twentieth century; and one 'cold' war in the second half. It focused on the negotiation behaviour of fifteen world leaders: US Presidents Woodrow Wilson, Franklin Roosevelt, John Kennedy, Richard Nixon and Ronald Reagan; Soviet leaders Joseph Stalin, Nikita Khrushchev, Leonid Brezhnev and Michael Gorbachev; British Prime Ministers David Lloyd George, Neville Chamberlain and Winston Churchill; as well as French Prime Minister Georges Clemenceau, the German *Führer* Adolf Hitler and the Chinese Prime Minister Zhou Enlai.

All of these leaders were strong characters, partly steered by the interests of their countries, and partly directed by their own personality and ego. In all of the cases, their personality weighed heavily on the negotiation process and its outcome. The egos of Wilson, Nixon, Stalin, Chamberlain and Hitler often overruled the interests of their country. Wilson was too idealistic and self-centred, caught in his own inflexible ideas. Nixon was a realist, as well as the victim of his narcissistic self-image and jealousy. Stalin was caught in his suspicion of others and the necessity to survive them. Chamberlain, wanting to do better than his father and his brother, entrapped himself in his dealings with Hitler and turned a blind eye to reality. Hitler decided that he alone would rule Germany and Europe, if not the world, during his lifetime, and was ready to sacrifice 60 million people, as well as his own country, in order to reach his two egotistical aims: the destruction of Bolshevism and Judaism (Haffner, 2011).

Roosevelt, Kennedy, Brezhnev, Churchill and Clemenceau tried to balance their ego-system and the defence of their reputation with the interests of the country that they represented. Roosevelt had problems in being an effective negotiator because of his health, like Kennedy, but in order to make reality manageable, he turned a blind eye to Stalin's cruelty. Kennedy was driven by his will to succeed in spite of his health, and to outmatch his father and brothers. Although he approached international politics in a rational way, he entrapped himself in the Cuba crisis because of his drive to show that he was a strong leader. Brezhnev was a power politician, but his love of luxury made him sensitive to blackmail. Churchill, also a power-broker, was nevertheless propelled by his own ideas, and had difficulties in listening to other opinions. Clemenceau defended the interests of France in a very skilful way, but his hatred of the Germans led to grave consequences for France's future.

Reagan, Khrushchev, Gorbachev, Lloyd George and Zhou Enlai gave precedence to the interests of their state over their own ego, although this was often a struggle. After all, becoming a world leader means having the incentives to become it, with one of the main drivers of this inner process being self-esteem and a strong ego-system. Reagan, being a realist on the basis of a strong conservative and anti-communist sentiment, was pragmatic enough to deal with his arch-enemy in a constructive way. As a team player, he allowed credit to go to others than only himself. This spirit also allowed for the chemistry between him and Gorbachev. Gorbachev knew that he had to take certain crisis steps in order to avoid the Soviet Union from falling into oblivion and he thereby endangered his reputation at home. Khrushchev helped to save the world from nuclear disaster, swallowing his pride and prejudice. Lloyd George was a pure example of a British pragmatic politician, unbothered by his own ego or his own principles, if any. Zhou Enlai had the same inclination, which made life difficult for him, given the ideological environment in which he had to operate. It did not earn him too many credits from his boss, the great helmsman Mao Zedong.

Each and every negotiating leader described in the paragraphs above had a strong ego, but the impact of their egos on the negotiation process varied. What did not vary, however, were the strong footprints that they each left on the processes and the outcomes of the bilateral and multilateral negotiations in which they were involved. This stamp was stronger at home than abroad. They all had to defend their positions against critics in their constituencies, particularly the democratic leaders, of course, but also those representing

authoritarian and even totalitarian regimes had to take into account potential rivals. They also had to depend on support at home in order to prevent their downfall. They therefore had to work from a position of strength, and this strength had their ego-system as its backbone. How could they convince others if they were in doubt about themselves? Some, like Chamberlain and Kennedy, did doubt themselves – and perhaps this was the case with Hitler and Stalin as well – so they had to compensate for this by acting in an overconfident way. It should be noted here that the ego question is, of course, not the only indicator for their behaviour. Former UK Minister of Foreign Affairs and neurologist David Owen takes us one step further. He explains their behaviour from the angle of mental and physical health (Owen, 2008).

Alfred van Staden wrote that leadership in modern times – and especially in modern democracies – is an increasingly difficult task to fulfil (Van Staden, 2008), one of the reasons being the growing role of the public and social media. As populations become better educated and have the means to voice their concerns, leaders have a problem in forcing their will – and thereby their ego – on national and international politics. Another reason is globalization and the multi-polar system that is on the rise. This will make leadership increasingly uncertain and will therefore hamper leaders' effectiveness in negotiation. This is because, on the one hand, it is vital for negotiation to flow unseen by public opinion before they are made and the agreement has been reached, and, on the other hand, because of the competition between more and more leaders with relatively small power asymmetry, which complicates the option of drawing negotiation processes to a successful closure. Finally, it is their own representatives who can limit the grip of the leader on the negotiation process and its outcomes:

> […] the agent is able to weaken the principals' incentives to control in order to promote the successful accomplishment of the delegated task, in casu negotiating an international agreement. An agent who wants to weaken the control incentives of its principals in order to avoid involuntary defection and a loss of face vis-à-vis its negotiation partners at the international level can strategically make use of the mechanisms that are established by the principals to control the agent during the international negotiations' (Delreux and Kerremans, 2010: 372).

If these trends can be projected into the future, we can expect political leaders to have less influence on negotiation processes and the ensuing agreements. On the negative side, this will lead to less-effective – or no – outcomes as a consequence, but on the positive side it will limit the impact of the leader's ego on the bargaining process. It will diminish unpredictability and it will stabilize the process. Yet a perfect equilibrium makes it hard to push for results in crisis situations where strong and powerful leaders are the ones who make the difference, who can break the 'mutual hurting stalemate' and work towards the 'enticing opportunity', even in 'a soft, stable self-serving stalemate – from which neither party has an incentive to move, the hallmark of intractable conflict' (Zartman and Anstey, 2012: 5).

CHAPTER X

The Twenty-First Century: Structure and Negotiation

Part of the text in this chapter is based on Meerts and Cede (2004); the other part was written specifically for this treatise. It has been pre-published in Meerts (2013f).

CHAPTER X: THE TWENTY-FIRST CENTURY: STRUCTURE AND NEGOTIATION

The European Union (EU) was selected as the case-study for the twenty-first century in order to demonstrate the connectedness between negotiation and structure. 'European Union is the result of institutional, legal, political, economical and cultural construction that took place in the second half of the (twentieth) century' (Puskas, 2013: 9). As a mode of European unification, the European Union is a good example of an international actor channelling negotiation processes in an optimal way. 'The EU is perhaps the extreme case of a strong institution that should shape negotiation behaviour among members' (Odell, 2010: 625). Compared to other collective international actors, the European Union is a strong transnational organization with unique international and supranational features (Van Staden, 1996: 12). This strength has an impact on negotiation processes and their closure. It has a strong legal system with the Court of Justice of the European Union with powers to enforce compliance on the EU member states. Its institutions have their own role to play and cannot be ignored. The Union's architecture consists of a wide range of actors, issues and thereby processes, with consequences for the EU's citizens, their governments and those of other countries in Europe and the world (Naurin and Wallace, 2008).

This chapter analyzes the character and characteristics of some of the key internal and external negotiation processes of the EU, as they have been influenced by the strength of the organization. It looks in particular to negotiation processes among the member states in and around the European Union's main institutions: the European Council; Council of Ministers and its subdivisions (as well as the Council Secretariat); the European Parliament; and the Commission. Special attention will be devoted to the role of the Presidency of the first two institutions. The chapter will then try to answer the question of to what extent context and process affect further successful negotiations and fruitful outcomes.

Years after the European Union sprang out of the Second World War, in different stages and with a growing number of member states, until it received its present name under the Maastricht Treaty of 1991, which was amended by the Lisbon Treaty in 2009. Ripeness in negotiation is often created by crisis and the Second World War can therefore be regarded as the final wake-up call for Europe. Bilateral relations were not enough to secure peace and prosperity. It was therefore in the countries' interest to take the negotiations further than in the past to the multilateral and even the supranational level. This change of context was facilitated by the threat of the Soviet Union and the United States' support in protecting and restructuring the old continent – through Marshall Aid and NATO – as well as by the growing willingness of the Germans to apologize for their crimes and the increasing readiness of the victims to live with the Germans in harmony.

After all, as analyzed in the preceding chapter, negotiation is also about emotions, values and norms.

Uniqueness and Strength of the Organization

'The European Union is a unique entity – neither a classic intergovernmental international organization nor an ongoing diplomatic negotiation' (Lodge *et al.,* 1998: 289). It has created different decision-making regimes dependent on the policy domains at issue. In general, the community method applies to all issues related to the internal market. Foreign and security policy stands out as the classical domain of intergovernmental cooperation, with member states retaining their veto power on all substantive subjects (Nugent, 2010). The EU, in turn, is dependent on 'negotiations as a mode of reaching agreements on, and implementing, common policies' (Elgström and Jönsson, 2005). The enigma of the EU process hinges on characteristics that distinguish it from other international negotiation processes. The more it develops itself, the more we can hope for better cooperation among its members and thereby for more effective negotiation and vice versa. 'Intelligence enhances mutual cooperation in the quintessential situation in which its benefits can be foreseen. A society that gets smarter, then, may be a society that becomes more cooperative' (Pinker, 2011: 662).

First, the chapter will discuss the intertwining of national and international negotiation processes, as 'the EU mainly governs through inter- and transgovernmental negotiations and political competition between states and regions' (Börzel, 2010: 191). Another characteristic of the EU negotiation process, which it shares with other strong international organizations, is its continuity. Third, the number of issues dealt with in the Union and the consequences of its decisions for the member states are incomparable to other international regimes. Fourth, an important characteristic of the Union is that this coalition of states is more homogeneous than most of the other international negotiation groups. The Union's negotiation process is based on more than a community of interests; it is also a community of values within a legal framework. This framework is the fifth element distinguishing the Union from other international institutions.

These building blocks distinguish the negotiation processes in the European Union from negotiation processes in other international settings, although the overall tactical advice for multilateral negotiators also applies to EU negotiators (Lang, 1994: 210–211). Assured outcomes are frequent in EU negotiation processes, partly because of mechanisms such as supranationality and the continuous nature of the process. Compared to, for example, environmental negotiations, the level of 'unavoidability' is incomparably higher (Sjöstedt *et al.,* 1993: 303). The nature of the outcomes is overwhelmingly positive, while this is by no means evident in other negotiation processes, where international economic relations are predominant (Zartman, 2000: 327). The implementation of these outcomes and the strength of the EU institutions in enforcing compliance are much greater than in, say, negotiations on the environment (Sjöstedt *et al.*, 1994: 233). The ability of the EU negotiation process to work as a continuous upside-down cascade (Zartman, 2003: 180), where one level facilitates progress on a higher level of negotiations, sets it apart from the regular patterns of international negotiation processes. It is a system of 'multi-level governance' in a 'dense institutional framework'.

How does the European Union manage to be such a relatively strong organization today? According to William Wallace, 'The EU system, through the intensive interactions of transnational and trans-governmental networks that now characterize it, has become a collective system of governance, resting on overlapping elites' (Wallace, 2005: 491). Hosli and Arnold add to this that:

> The European 'relative preference for homogeneity' among EU member states [...] might be explained, for example, by a gradual process of socialization of these states into patterns of EU policy-making, 'learning' the culture of negotiation within the European Union, and the gradual development of similar expectations regarding EU ntegration (Hosli and Arnold, 2010: 617).

The EU can thus be seen as the *sui generis* pinnacle of the developments described and analyzed in the previous chapters of this book.

In the academic world, a multitude of theories have been used to explain the – so far – growing integration of (Western) Europe and its downsides (Cram *et al.,* 1999; Hale *et al.,* 2013; and Tallberg, 2010). The trend towards further integration and institutionalization has a positive influence on the effectiveness and thereby the use of negotiation as an instrument in international relations, as was stated in Chapter III of this book, but cooperation will not be enhanced automatically.

According to Jeffrey Lewis,

> [...] those institutional environments which code higher on a set of four independent variables [...] that is, are highly insulated from domestic audiences, transact with wider scope, high interaction intensity, and/or maintain a high density of norms and group standards [...] exhibit more robust patterns of cooperative negotiation (Lewis, 2010: 648).

Concerning the Council of the European Union, Lewis concludes that more intense cooperation has developed over time, as 'the Council's institutional environments have [...] instilled intrinsic collective preferences for cooperative negotiation' (Lewis, 2010: 660). Brian Hocking expands on the intensity factor by stating that a 'dominant theme in diplomatic change which has considerable significance in the EU policy milieu is the compression of time and space' (Hocking, 2004: 97). On the same note, it could be stated that 'intensified cooperation leads to a greater understanding and the creation of a shared system of values and norms' (Meerts, 2001: 8–9), although it is a slow back-and-forth process (Meerts, 2012: 614–617).

The Role of the Negotiation Process

Negotiations are a vital instrument in integrating Europe. 'Negotiations are central to the functioning and dynamic development of the European Union. Negotiation is seen as the predominant policy mode and the main source of the EU's successful functioning' (Lodge *et al.,* 1998: 293). Protecting the negotiation process by creating – through that

very process – an institutional framework that enhances the effectiveness of diplomatic negotiation is the very essence of the Union:

> Negotiations are ubiquitous in the European Union and essential to its functioning. Virtually every EU activity was set in motion through a process of negotiation. Moreover, in one way or another, these negotiations include every type of actor in the EU, including most notably the governments of the member states, the Union's supranational bodies, and national parliaments, but also civic associations and industry lobbies, at least informally. Given that the EU was born as a voluntary association of sovereign states, one could even describe negotiations as a behavioural manifestation of the EU's fundamental identity (Dür, Mateo and Thomas, 2010: 615).

It has been argued that the European Union is ultimately a negotiated system (Dür and Mateo, 2010a). Negotiations are the main tool in shaping the institutions and regulations of the Union. Negotiation is the life-blood of the Union. One has to analyze it to understand why the Union has been, and will be, forged in a certain way. The Union, after all, is like a group of one-cellular beings (states) that give up part of their autonomy to create a stronger and more potent organism that will serve all. The Union adds value; the whole of all the member states is more than the sum of the products of the individual units shaping the EU. Whether this should be done through supranationalism or intergovernmentalism or a mixture of the two is another matter. The point is that negotiation is the instrument that the constituent parts use to solve the problems that block their coming-together.

The negotiation process in the European Union is a multilateral process of an international nature with supranational elements. The process is sandwiched between national and international negotiation (Putnam, 1988). There is more control than in international negotiation processes, but less than in national processes. Diplomats are present on the scene, like in other international negotiations, but civil servants have slowly but truly become the dominant force, like in national negotiation (Meerts, 1999). In other words, this is a system in transition. It is also in transition in another way. While traditional bilateralism is on the way out through the front door, as it is dominated by the multilateral EU processes, new bilateralism is coming in through the back door as a way to deal with the ever-growing complexity of the multilateral interactions. Bilateral negotiations and lobbying are needed as a means to keep the machine going. The more formal institutions and regulations are created, the more informal tools are needed.

The European Union as a process of international negotiation can survive only if a certain quantity and quality of outcomes are reached. Unless effective outcomes to the negotiation process are assured, the building will collapse. While in other international negotiation processes, open-endedness – while not preferable – is often unavoidable and for a certain length of time acceptable, this is much less the case in European Union negotiations. No increase in the number of decisions to be taken means an actual 'decrease' in the Union, and without progress in the integration process, the EU might slide into disintegration. The Union's negotiation process is therefore of relatively greater importance than negotiation processes in other international bodies. Although it does not have the same importance and intensity as national negotiation processes, the EU

process is of more general value than negotiation processes between states. The EU negotiation process can be characterized as having an in-between position.

Characteristics of the EU as a Negotiations Arena

'EU negotiations are multilateral, multi-issue, recurrent, sometimes informal, subject to a distant shadow of the future, and complicated by the fact that some of the institutions within which they occur are also negotiators in their own right' (Dür, Mateo and Thomas, 2010: 617). According to Perlot, EU negotiations are characterized by consensus-seeking behaviour, issue linkage, specific and diffused reciprocity, as well as the predominance of the shadow of the future (Perlot, 2011: 14). Moreover, because of the supranational character of vital segments of the European Union, the EU negotiation process can be positioned halfway between national and international negotiation. It contains more assured outcomes than in international processes, but fewer than in national bargaining. It is more centralized and controlled, for example, because of the existence of the European Commission, being the guardian of the treaties, than other international negotiation processes. Yet at the same time it cannot match the consistency of the internal negotiation processes of well-functioning national states. However, as this chapter will show, such national negotiation processes are often of an extremely complex nature, and the coordination of internal priorities is one of the main problems faced by the EU member states in shaping their own EU negotiation processes. It should be noted that the supranational character of the Union indeed has a clear impact on the nature of the EU process, but it should not be forgotten that major parts of the EU negotiation processes are still of an intergovernmental nature, particularly foreign and security policy. This intergovernmental dimension, however, is of a more integrated nature than in other international organizations. Because of the very close cooperation among the EU member states and the existence of supranational actors inside the Union who also exert a great deal of influence on the intergovernmental negotiation process, even this part of the process can be seen as unique in the world. Both the supranational and the intergovernmental facets of the EU provide for a negotiation process where outcomes are more secure than in other international forums.

The Union's democratic dimension is another aspect that helps to distinguish EU negotiation processes from others. Indeed, in 'regular' international negotiation processes, the people play only an indirect role through governmental and non-governmental institutions. In the European Union, democratic actors – like political parties – are involved in the negotiation process at the European level, but their influence is to date quite limited. Furthermore, there is a growing involvement of national parliaments through yellow and red card procedures, which can both further and hamper the functioning of the Union. The impact of the Union's representative organs on the processes of negotiation has the effect in general of complicating matters. However necessary from an ideological and democratic point of view (as all EU member states are democracies), this political dimension does not always help to further effective processes and assured outcomes. On the contrary, many perceived assured outcomes have not been achieved because of interventions by politicians – interventions that were often motivated

by national interests that worked against the common European good. The EU process could thus be seen as more puzzling than the 'normal' international negotiation processes.

While international negotiation processes are defined here as inter-state processes (that is, between sovereign actors), the peculiarity of the EU process is its mixed character. Sovereign actors are playing a role that is even more important than that of EU bodies such as the Commission and the European Parliament, but there is a distinct interplay between these two kinds of international actors: the states; and the EU institutions. An example of such a dense negotiation process between states and supranational or international institutions cannot easily be found anywhere else in the world, and the result is a unique process of negotiation in which the states have lost most of their power monopoly. Through this 'enhanced interaction', EU member states and European institutions are negotiating their deals in a multitude of forums in negotiations that are characteristic of EU processes.

The classical Westphalian situation whereby sovereign actors negotiate on a voluntary basis is partly gone in a European Union where a substantial part of sovereignty is pooled in the EU institutions. States cannot act at will – with the exception of the Intergovernmental Conferences (IGCs) – as they have lost the majority of their 'freedom to decide' in negotiating certain issues. In other words, BATNAs (that is, 'best alternatives to negotiated agreements') are often absent (Fisher, Ury and Patton, 1991): if matters are on the agenda, then the alternative of non-negotiation is no longer present. 'Classic' theories do not hold here, and only active pre-negotiation might provide states with something like a BATNA instrument. Even this, however, is hardly true anymore. Essentially speaking, the fact that the EU and its member states share sovereignty in the core areas brushes the BATNA issue aside and enhances the possibility of assured outcomes – or perhaps we should say 'unavoidable outcomes'. A major exception here is the negotiations on Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy (CSDP). In this arena, the negotiations are essentially classic international interactions where BATNAs are of importance.

The European Union is a rich resource of negotiation options and opportunities for coalition-building (Van Schendelen, 2004: 17–34). On the one hand, this provides negotiators with a multitude of options and alternatives that enhances their power positions. On the other hand, it obscures their opportunities because of its ambiguity. Much of the negotiation process in the EU is ultimately about the creation of legislation as a consequence of political prioritization. To set clear priorities, however, negotiators will have to clarify their strategies, and to be successful in implementing these strategies, negotiators will have to master the complexity of the process, not least in dealing with their constituencies (Putnam, 1988). As processes are more complex within EU negotiation than in other international bargaining processes, highly professional negotiators are needed.

Countries are therefore creating a new layer of negotiators between diplomats and national civil servants, and between generalists and specialists. This new type of negotiator, a specialist in Public Affairs Management, could be instrumental in managing the complexity of the European negotiation process. As these negotiators have roles that are specifically linked to the very nature of EU negotiation, their operations will facilitate European integration through negotiation. The growth of European unity is not only shaping a new institution on the world stage, it is also creating a new kind of international negotiator and a new kind of international negotiation process.

What happens at home is vital for understanding the EU negotiation process (Van Keulen, 2004: 35–50). It all starts with insight into the negotiation processes within the member states of the Union – the coordinating negotiation processes at the domestic level. The EU bargaining system is characterized by extraordinary procedural complexity in a heterogeneous playing field that is suffering from increasing politicization. There is procedural clarity at the negotiation table, but not between the different levels of negotiation processes. This is because of the unclear separation of powers within the Union. Although the EU is a complex combination of institutions that should support negotiation processes, the connection between these processes is ambiguous because of the unclear linkages between the platforms on which the negotiations take place (Hooghe and Marks, 2001). A horizontal overview is therefore difficult, thus complicating the possibilities for diagnosing effective package deals among different policy areas.

Vertical insights are also hard to obtain, as the pace of the dossiers is extremely unequal. While some dossiers will make it to the highest levels of EU negotiation platforms, the vast majority will be settled at mid-level platforms, obstructing the opportunities for remaining dossiers to be included in package deals. Package deals are therefore more dependent on the availability of still-negotiable dossiers than on the most effective linkages (Bal, 2004: 131). While this lack of clarity is an obstacle to the creation of clear-cut national strategies for effective negotiations in Europe, it can also be seen as an opportunity for the negotiators. It would be extremely difficult for negotiators to be effective if they had to follow strict procedures that were laid down by the home front, as there are so many unpredictabilities in the EU negotiation process. They would simply lose too much flexibility. The impossibility of rigid mandates being constructed by the ministries back home therefore provides EU negotiators with the flexibility that they need to cope with any surprises in the process on which they are working.

Meanwhile, more and more players from different institutional levels are entering the arena – not only through enlargement of the European Union, but also through the participation of a growing number of regional governmental, non-governmental, public- and private-sector organizations (Van Keulen, 2004: 45). Confronted with the problem of a not-entirely level playing field in Brussels and problematic prioritization at home, the EU member states are clinging to negotiation procedures concerning their own coordination practices, which can no longer cope with the complexity of the EU negotiation process. The ministries of foreign affairs, which were traditionally the coordinators of national EU policies, are overwhelmed by the multitude of actors and issues in the EU negotiation processes. We have here a clear distinction between EU and other international negotiation processes: a quantitative difference with qualitative effects on the bargaining among negotiators, as well as the growing importance of national civil servants on a terrain that is the traditional domain of the international civil servant – that is, the diplomat.

Another differentiating factor between 'regular' international negotiations and EU negotiations is the impact of politics. As most EU issues are of an internal and not international nature, parliamentarians and other politicians tend to meddle in the processes managed by the professional negotiators. This, although positive from a democratic point of view, obscures the transparency of the negotiation processes at hand. While diplomats are trained to look for compromises and collaboration, politicians are

often striving for polarization and competition (Nicolson, 1998). In many cases, political intervention therefore creates obstacles to the integrative negotiation that is needed to obtain the desired outcomes of these processes.

Member States in the EU Negotiation Process

The role of the member states might be less prominent than non-EU negotiators often assume (Langenberg, 2004: 51–70). As EU negotiators are aware, there are only limited possibilities for influencing EU negotiations, and states have to operate within strict legal limits in these areas. Strategic planning is therefore of paramount importance. This brings up the point of qualified majority voting (QMV), a decision rule that has increasingly been applied as a tool for making progress in EU negotiations. Without this instrument, the European Union would not have been as successful in decision-making as it is today. However, the fact that countries can be out-voted puts a great deal of pressure on their negotiators. Coalition-building is one of the answers in this context, as is a change in attitude. Negotiators will have to show an increased willingness to accept compromises, something that is not too common among the actors entering the EU negotiation scene after a new round of enlargement.

Actors in the EU negotiating process are not only bargaining on their needs, but also on their common and opposing values. It should be noted that values do play an important role in EU negotiations. One might describe the bargaining process as an exchange of commodities, but one might also point out that the underlying values should not be overlooked. These values are the objects of the trading process, as well as influencing it. A modest clash of EU civilizations within Europe is one of the characteristics of the EU negotiation processes, such as the cultural differences between the northern and southern member states and those from Central Europe. These differences express themselves in the languages used by the negotiators. In many plenary sessions of EU Council working groups, the countries north of the River Rhine speak in English, while those from within the former Roman Empire use the Latin language that we call French. Moreover, what may be seen as ethical in the eyes of a Swede may be unethical in the perception of a Greek.

EU member states operating in the EU Council of Ministers have different approaches to the process of EU negotiation, not only because of differences of interest, but also because of differences in structure (Bal, 1995; and Bal, 2004: 127–142). In addition different negotiation styles, or the 'software' of negotiations, can be observed. These different styles are not so much a consequence of differences in national culture as a result of national political and bureaucratic structures. For example, the French structure produces effective coordination combined with a reasonable amount of freedom for its well-educated and skilled negotiators. The German system, however, makes life quite difficult for its negotiators. The federal mode obstructs efficient and coherent decision-making at the national level, which leads to constraining German negotiators in their deadlines in Brussels. The British are – in general – well placed for negotiation, as they combine a pragmatic and flexible attitude in the negotiation process with a tough defence of their interests. Spanish negotiators seem to be more effective than their Italian colleagues, mainly because of the strength of their bureaucratic organization. The larger

EU member states share their potential for dealing with the whole range of EU issues in a balanced way, while the smaller member countries – because of the relative smallness of their governmental apparatus – are forced to follow more of a single-issue strategy.

Most EU governments have relatively limited options for influencing EU negotiation processes, with the large ones a notable exception (Tallberg, 2010). As far as the future is concerned, this room for individual needs will diminish further because of the growing importance of the EU institutions, as well as the rising number of member states because of the Union's enlargement process. Strategic planning and the effective use of tactics are therefore important in pushing for the needs and values that the individual states want to fulfil. As mentioned earlier, coalition-building is one of the major options here, but this will, in turn, dilute the individual actor's position (Dür and Mateo, 2010a; Guggenbühl, 2013). This is a strange paradox: a particular position can be successful only if it is compromised upon before the actual bargaining process starts. From the perspective of the common good, this is a wonderful instrument for forcing partners into a given frame, but for those that want to uphold the priorities set by their governments, this dynamic is problematic, to say the least. Prioritizing is important, however, as it will help the individual country to get its act together. After all, how can it concede, if it does not prioritize? On the other hand, in intense negotiation processes such as those in the EU, where negotiators get to know each other and sit around the table together for years, the negotiators are forced to acknowledge the specific needs of their counterparts if they want their opponents to respect their own specific interests. In other words, although there is an ongoing give-and-take process, certain specific interests are respected and will not be out-voted, as this would damage the very integrity of the countries involved. Negotiators can be open to a smooth process of conceding and obtaining only if they feel safe, and they will only feel safe if they can place trust in the ability and willingness of their colleagues to take into account their core interests and values.

The EU member states organize themselves into coalitions. These coalitions 'entail the pooling of power and resources by the constituent parties in pursuit of a desired outcome' (Blavoukos and Pagoulatos, 2011: 561). The coalitions can be based around the north–south cleavage (rich–poor, but primarily Germanic versus Latin cultures). There is a supranationalist–intergovernmentalist axis; an Atlanticist coalition versus a continentalist coalition; there are free-traders versus protectionists; and big versus small countries. Because of the euro crisis, the North–South divide seems to be of importance, and even then its salience is limited: 'no clear cleavage lines can be discerned in EU decision-making, except for a moderate North–South division' (Hosli and Arnold, 2010: 617). It should be noted that these coalitions are becoming more fluid over time, thereby enhancing flexibility and instability simultaneously. All of these cleavages are cross-cutting: one country is always part of more than one 'structural' alliance, and there are countless numbers of different coalitions on different dossiers. The effect of these coalition patterns is twofold: they both slow down and stabilize the EU negotiation processes. They also constitute a negotiation arena that, while securing both European and national interests, does not enhance the strength of the European Union as a global actor.

Procedures of the EU Negotiation Process

What kind of negotiation does consensus decision-making involve? This is an important topic for the European Union, as the decision-making procedures have an enormous impact on the negotiation processes and their outcomes (Heisenberg, 2004: 93–110). The impact of QMV in the Council of Ministers has been discussed before, but the question remains as to what extent QMV itself affects the negotiators versus the ability of negotiators to use it as a threat while consensus, in practice, remains the rule. One problem with the procedures in the EU is that they are often different from one issue-area to the other, thus limiting transparency and enhancing complexity. It should be noted that consensus decision-making is also the rule in areas where QMV is allowed. One reason for this is the Luxembourg Compromise of 1966, a package deal whereby countries try to avoid using their veto while at the same time trying not to invoke actual voting. Negotiating until general satisfaction is reached has thus become the reality in EU bargaining.

A major difference between EU and non-EU negotiations is the common understanding of EU negotiators that: EU decision-making is a non-zero-sum process; that the Commission is the agenda setter – with the European Council as the major body for strategic decisions – and will therefore enhance the possibility of coordinated solutions; and that the existence of the Court of Justice of the European Union guarantees implementation of the decisions agreed upon by the member states. An additional factor is the long-standing influence of these understandings on the negotiation process and, as a consequence, on the development of an EU negotiation culture with characteristics that cannot be found elsewhere. This evolution of cooperation creates an integrative bargaining process in which non-cooperation and tit-for-tat tactics are rare. As negotiators meet each other on a day-to-day basis, EU negotiations are more personalized than other international negotiations. This, in turn, creates a chemistry that furthers integrative bargaining, just as the collective gathering of information shapes a common referential frame.

The enormous number of issues in the EU negotiation processes provides negotiators, in principle, with numerous possibilities for package deals, thereby facilitating integrative outcomes. As we have seen, however, there are several obstacles on the package-dealing horizon that obscure the negotiators' view. Package deals sometimes work within one and the same dossier area if the deadline is approaching. Package-dealing between dossiers is not really feasible, with the exception of trade-offs at the highest political level (Bal, 2004).

Institutions in the EU Negotiation Process

The intergovernmental and supranational institutions of the European Union play their own intricate game (Beach, 2004: 71–92). How negotiations were structured and conducted mattered in terms of the supranational actors' ability to gain influence in IGCs. The EU member states often needed the supranational bodies as facilitators in reaching agreements. Although a non-supranational body, the Council Secretariat has been especially influential in this respect, which has to do with its expertise, as well as the fact that it is often ahead of the member states as far as information is concerned. Its skills are needed by the EU member states' negotiators who, especially those from the

smaller powers, often lack the apparatus to match their opponents. They may alternatively use the facilities of the Secretariat, which in turn creates a power base for the Council. Furthermore, trust plays an important role. The legitimacy of the Secretariat puts it in a central role as a neutral broker that can be trusted and will therefore be used by the players. The European Commission, however, has not always had the trust of the other actors, because it is a player itself, with its own interests to defend. As the Commission compensated for this lack of trust by taking extremist positions, the effect has been a further loss of legitimacy and therefore of influence on the negotiation processes in the intergovernmental conferences (Beach, 2004: 90). It could generally be stated that the more complex bargaining processes are, the more institutions are needed to guide negotiators through the 'forest'.

EU member states are consequently becoming more dependent on the institutions that they have created, and they will therefore invest them with more possibilities for influencing the EU negotiation processes. By creating a power base for the common institutions, albeit an informal power base, the common good of the EU may be furthered, but the individual bargaining positions will still suffer. As we have seen before, EU member states already have a diminishing range of options at their disposal because of the growth in the number of participating countries and the decrease in consensus-making in favour of the increasing use of QMV to decide the outcomes of EU negotiation processes. This not only applies to the regular bargaining processes, but also to those outside the normal patterns of EU decision-making, such as the IGCs. This does not mean, however, that inter-state negotiations are on the way out. On the contrary, as the multilateral process becomes more complex and more difficult to manage, bilateralism is on the rise. Countries will compensate for their lack of grip on the formal processes by being more active in the informal circuits, such as lobbying. This will facilitate the European Union's negotiation processes, but it could also enhance ambiguity and will water down transparency. This would create more difficulties for individual actors to establish effective strategies, so that they would have to turn to allies and institutions to compensate for their own negotiating weakness.

However, the institutions might still play an important role, but the trend towards strengthening them seems to be over. The exception is the European Parliament, not only as a consequence of the extension of its power because of the Lisbon Treaty, but also because of a self-propelling dynamic. The United Kingdom has always been anxious about too strong a European Union curtailing its traditional freedom of manoeuvre, but in the wake of the euro crisis, other 'northern states' – such as the Netherlands and even Germany – are becoming slowly but truly more Eurosceptic. The Netherlands, citing the failed 'Maastricht Proposal' in the early 1990s, is now one of the more hesitant countries as far as further integration and enhanced supranationalism are concerned (Van den Bos, 2008: 377). For the process of EU negotiation, this growing distrust in the European Union implies less assured outcomes in a relatively weakened Union. Whether this is good or bad is debatable. According to Louise van Schaik, 'more EU unity can be beneficial for the EU's effectiveness, but can also provoke a negative reaction from negotiating partners. The EU acting as a bloc may cause irritation' (Van Schaik, 2013: 192). In other words, a cohesive European Union might strengthen its influence over non-EU negotiations, but

perhaps also be weakened. Increased cohesiveness and acting as a bloc could therefore diminish its negotiation effectiveness.

The Presidency in the EU Negotiation Process

Although the Presidency is not an institution of the European Union, it seems relevant to discuss it before this book turns to the formal institutional framework (Schout *et al.,* 2004). Since the Lisbon Treaty, the European Council has enjoyed a semi-permanent President of the European Council – the highest political level of the European Union, with a term-in-office of two-and-a-half years and the option of one extra term of the same length. The first President of this kind, Belgium's former Prime Minister Herman Van Rompuy, understood how to play his role: he seems to be in the background, avoids 'egotiation', but is as influential as necessary from behind the curtains. Timing is essential, as is knowing when to pull and when to push, and trying to stay out of the limelight as much as possible in order not to irritate the European heads of state and government unnecessarily. As the European Council represents the EU, the President contributes to the stability of the Union and to the effectiveness of its negotiation processes. Its role was already growing under the old system of the rotating Presidency: 'the Presidency has evolved into the most important institutional mechanism through which EU governments reach efficient bargains' (Tallberg, 2008: 201). The semi-permanency of the position was expected to stabilize the Union further, thereby facilitating more assured outcomes of EU negotiation processes. Another novelty stemming from the Lisbon Treaty was the creation of the High Representative for Foreign Affairs and Security Policy as the permanent chair of the EU Foreign Affairs Council. Former European Commissioner for Trade and British parliamentarian Catherine Ashton was the first chair-holder. This role will also help to enhance cooperation and thereby further EU stability, as the High Representative of the Union for Foreign Affairs and Security Policy presides over the Foreign Affairs Council of the European Union.

The old system of rotating country chairs – every six months – is still in place as far as the other decision-making levels of the Union are concerned. These chairs still play an important role in the EU negotiation processes, as they did at the time before the installation of the semi-permanent Presidency. One important duty of the chair is to guarantee the continuity of, and progress in, the negotiations on the various agenda issues. The country holding the rotating Presidency has a moral and political obligation to be successful during its six months in office. Failures shame the country, which holds responsibility for guiding the Union through its official term. National honour, and therefore the political position of the leader(s), is at stake. This is a strong incentive for a country to invest plenty of energy into its period of Presidency. It is important to be successful and to avoid crisis situations as much as possible, as they might lead to failure. The consequence of this is that countries holding the rotating presidency often adopt a risk-avoidance style, as risk-taking presidencies have – so far – not been very successful. Hobby-horses can be a serious obstacle to effective leadership in the negotiations chaired by the country in charge (Guggenbühl, 2004: 171–198).

The chairing country still has an important role to play, especially when the other actors fail. To be effective, planning is essential. Most countries prepare seriously for their term, and broad layers of the bureaucracy are trained in understanding the issues

at hand and in dealing with them in an effective way. Pathfinders are sent out to gather information in EU capitals in order to obtain a thorough insight into the perceptions of the other EU member states concerning the issues that will be dealt with in the next half year. During its term in office, the chairing country must keep in mind that technical chairing is just not enough. Maintaining order will not – by itself – lead to progress in the negotiation process. So-called 'corridor work', informal talks, mediation initiatives between opponents, performing well with the other institutions of the European Union, as well as pleasing public opinion in member states, are all activities that can help the chair to be seen as effective. Some findings of effective EU chairing behaviour will be presented under 'Unilateral Lessons for Chairing' in chapter XI.

The European Council in the EU Negotiation Process

Negotiating European policy in the European Council – the multilateral negotiation between the political leaders of the EU countries plus the Presidents of the Council and of the Commission, and (depending on the agenda) the High Representative and an individual minister or commissioner – is EU negotiation at its highest level (Werts, 2008). This is both because of 'the elevated status of its participants and the important nature of the matters that come before it' (Buonanno and Nugent, 2013: 45). The European Council can be regarded as 'a sort of Board of Directors of the EU' (Buonanno and Nugent, 2013: 46), with the task to enhance 'mutual understanding and confidence between governments of the EU Member States' (Buonanno and Nugent, 2013: 48). This most important negotiation arena of the entire EU, which meets at least twice every six months, is the platform for the final political decision-making in the European Union, and thereby its instrument of last resort in conflict resolution. Its decisions are almost always taken by unanimity (Buonanno and Nugent 2013: 46). Here, the negotiation processes come to an agreement, or failure. This is the place of an ongoing struggle, partly created by the occasional malfunctioning of the Council of Ministers and by the working methods and proceedings of the European Council itself. One side of the problem is that too many issues are not finalized by the ministers and end up on the table of the heads of state and governments. Too many 'low-political' topics have to be dealt with at too high a political level. This mismatch has to do with the risk-avoidance attitude of the lower political and diplomatic strata. As well as the problem of the leaders being swamped, there is the question of languages. As the European Union grows, so too will the number of languages in use (Van Grinsven, 2004: 127–142).

More perhaps than on other negotiation levels, the personal qualities of the leaders in the European Council have an impact on the negotiation process, as was highlighted in Chapter IX of this book. After all, the leaders are vested with a great deal of power and are therefore highly 'relevant' people. Character always counts, and some research seems to indicate that, within the EU, character differences among negotiators have a greater impact on negotiation relationships and processes than culture. But for those who represent the states at the highest levels, personal characteristics may be even more relevant than for other representatives. Earlier in this book, we saw the impact of people liking or disliking each other on the relationships between leaders, and therefore between the member states. This had nothing, however, to do with political colour. There have been German *Bundeskanzler* who were able to work very well with French presidents of a different

political inclination while having no chemistry with presidents of the French Republic who were politically close to them. Other elements influencing mutual relationships are the power of the countries involved (size, population and economic performance), as well as the constitutional position and seniority of the leader. However, although the bigger EU member states play a dominant role 'small member states have enjoyed considerable influence over decision outcomes in the European Union' (Thomson, 2008: 255).

The Council of Ministers in the EU Negotiation Process

The Council of Ministers is – together with the European Parliament – the legislature of the European Union. The Council and the Parliament can be seen as the two houses that have to co-decide on EU legislation (Buonanno and Nugent, 2013: 49–54). If in disagreement, they have to negotiate a common position. Negotiation and mediation in the EU Council of Ministers are important processes in view of the key role that the institutions have to play as concession-making machinery (Elgström, 2004: 111–126). The highly institutionalized character of bargaining in the Council is of importance here. Agenda-setting and initiating, the impact of procedures (including voting rules) on negotiation behaviour and coalition-building, different mediating roles, and the effect of the institutional context on the negotiation process are vital ingredients in understanding the EU menu. Consensus-seeking behaviour and problem-solving approaches in EU bargaining are characteristic for the European Union, because there is a perception on the part of member states that the EU will provide them with mutual efficiency gains on the basis of common values. As far as negotiation is concerned, it is easier to accept a proposal by majority vote than to amend it; the Council adopts a Commission proposal – the *de facto* single negotiation text for the Council of Ministers – by QMV, but can amend it only by unanimity. For the Commission, therefore, agenda-setting is a power resource, as is the prerogative to withdraw its proposals, but this only counts for cases outside the domain of the High Representative for External and Security Policy: 'the Council of Ministers' decision-making and negotiation style is institutionally unique' (Heisenberg, 2008: 273).

Since the Lisbon Treaty in 2009, a qualified majority consists of 55 per cent of the member states, representing 65 per cent of the population, although there is a transitional period and CFSP plus CSDP are largely exempt from it (Buonanno and Nugent, 2013: 49–54). In those EU areas where QMV is possible, constructive negotiations are imperative. Negotiations are primarily problem-solving exercises rather than the construction of minimal winning coalitions. Countries that are sure to be out-voted will normally go with the flow. Furthermore, there is a long-standing Council of Ministers' norm to avoid (out-) voting as much as possible. In practice, consensus is the rule, voting is a last resort, thus negotiation gains in importance. Package-dealing, facilitated by existing cross-cutting cleavages and different coalitions depending on the dossier at hand, is the major tactical device that is used to obtain agreements.

As far as coalition-building is concerned, which is after all a device for structuring the process, the emphasis is more on process coalitions than on voting coalitions. 'Practice teaches us that member states usually opt to pool their voices and to delegate authority to one or more EU negotiator(s)' (Delreux, 2011: 5). Furthermore, the Commission plays a role both as a facilitative and a preventive mediator, removing as many obstacles from the negotiation process as possible, while the chair is more of an ad-hoc mediator. These

mediators are not completely neutral; they have their own particular agendas. Some impartiality is needed, however, and this is one of the reasons why the chair of the Council and the leader of the delegation of the chairing country are always different individuals.

Ministers of the Council constitute the Policy Forum of the European Union, which is the central negotiations arena, although not the highest one. It meets in ten formations: General Affairs; Foreign Affairs; Economic and Financial Affairs; Justice and Home Affairs; as well as Employment, Social Policy, Health and Consumer Affairs; Competitiveness; Transport, Telecommunications and Energy; Agriculture and Fisheries; Environment; and Education, Youth, Culture and Sport. Beneath this lies a system of committees, the first of which is COREPER 2 for the Permanent Representatives of the Member States (that is, ambassadors) and COREPER 1 for their deputies, and then a whole range of working groups where the preparatory negotiations take place (De Zwaan, 1995; Beyers and Dierickx, 1996).

Connected to the Council of Ministers is the Council Secretariat: 'the Council Secretariat plays an important [...] role in ensuring the efficiency of intergovernmental Council decision-making' (Beach, 2009: 234). The Secretariat is also an important support for the European Council and the European Parliament.

The European Parliament in the EU Negotiation Process

The EEC Treaty gave the European Parliament purely advisory and supervisory powers (Carter, 2011: 221). Through Treaty amendments in 1986, 1993, the Treaty of Amsterdam in 1999 and the Lisbon Treaty in 2009, the European Parliament became a true EU institution with legislative powers. In the context of the ordinary legislative procedure, which in the past was labelled the 'co-decision' procedure, a Conciliation Committee was installed in which the Council has to negotiate with the Parliament if it turns down its amendments. It should be noted here that 85 per cent of legislative proposals are decided upon without the need to conciliate with the Council. Of the remaining 15 per cent, one-quarter of its amendments are accepted as proposed, while another one-quarter are withdrawn, so in approximately half of the 15 per cent of contentious issues a negotiated compromise has been reached (Buonanno and Nugent, 2013: 56). The European Parliament now has a formal role in the EU negotiation system, while it scrutinizes the Commission and the Council within this system. It also has a role to play in the enlargement procedure, so its powers have grown so much that EU member states, the Council of Ministers and the European Commission include the Parliament and the positions of its parties into account. As a consequence, the European Parliament has become a party in the EU negotiation processes.

As the European Parliament is a political institution that is fragmented into political groups, this enhances the democratic level of the European Union, but it also politicizes the negotiation processes, which is not always helpful for closure. After all, Parliament has its own internal negotiation processes, with log-rolling and legislative agreements in full session (Hix, 1999: 79), and thereby adds a new level to the EU negotiation process. The negotiation position of Parliament is still weakened, however, by several flaws (Nugent, 2010: 211–212). It does not have full legislative powers as it lacks the right of initiative, so the Council of Ministers still often decides 'in principle' before Parliament has spoken.

Moreover, the Council does not consult it on all legislative matters, and it does not need to be consulted on Commission legislation.

Although the European Parliament is still not a 'proper' assembly like the national ones, it has become an important player in the negotiation process (Nugent, 2010: 241). The Parliament has also broadened its influence to the EU's external relations and its management: 'the European Parliament was able to co-negotiate the making of [the European External Action Service] and to create a structured relationship between the High Representative and the EEAS that enables extended parliamentary oversight of the institutional setting of EU external relations and diplomacy' (Raube, 2012: 79).

The Commission as the Initiator, Implementer and Broker

The European Commission is the impartial element in the system of the European Union. It has to defend the EU's interests as a whole. It is supposed to be the motor of European integration, of which it is the initiator and day-to-day driver (Buonanno and Nugent, 2013: 39–60), the epitome of the *community method.* The Commission's President has an important role to play in the other institutions of the Union, but he lacks a privileged position in the realm of CFSP and CSDP, where the governments have the initiator's role. The Commission does not have a leading role in transgovernmentalism, but through issue-linkage, as well as through the High Representative, who is part and parcel of the Commission as its Vice-Chair and Commissioner, but it is nonetheless influential in this area. The Commission also acts as mediator and broker and it has strong executive functions, having close to 30,000 civil servants at its disposal. It is at its best with issues where its power is grounded in the Treaty of the EU, in QMV issue-areas, and in cases where EU member states are of the opinion that issues have to be solved at the EU level, or quarrel among themselves.

These executive functions include developing administrative laws, overseeing the implementation of EU policies by the national governments, and checking their laws, while in some cases it can implement EU policies directly in the national context. Furthermore, the Commission has a leading role in the process of enlargement of the European Union. It is the spin in the web of preparatory negotiations within the European Union. For example, towards the EU applicant countries there is hardly any room for negotiation left, once the European Council has given the green light for accession talks on the conditions of the 'chapters'.

The Commission's negotiation power *within* the Union stems from its information advantage, its prerogative to set the agenda through impact assessments, to withdraw its proposal, and to take judicial steps against member states and the European Parliament. Its *external* power stems again from being better informed than the member states, plus it can exceed its mandate while the member states will be hesitant to criticize the Commission about this for fear of weakening the European Union's power in the eyes of non-EU negotiating powers. The Commission can further strengthen its position in external negotiations by convincing the member states that they have to speak with one voice. 'Yet, the overrepresentation of Europe in many international institutions would further exacerbate if the European Union managed to increasingly "speak with a single voice" by way of more competences or coordination' (Gstöhl, 2009: 403).

EU Enlargement and External Negotiations

The European Union's external policy is quite effective in negotiations with candidate members:

> An applicant first has to be declared as an official candidate, which requires that the country satisfies the political aspects of the Copenhagen Criteria. Then, it has to adopt and implement the acquis communautaire, the whole body of the European Union rules and regulations in force (Kibris and Bac, 2011: 399).

According to the Copenhagen Criteria from 1993, later amended at the European Council in Madrid in 1995, the new member state will have to be a European country with stable state institutions, respecting democratic principles, human rights and minorities. An applicant state should have a functioning market economy that can meet competition at the European internal market, and it has to adopt the *acquis communautaire* and apply it accordingly. Even with these seemingly objective criteria, the perceptions of the parties in the enlargement process can differ substantially and will therefore influence the negotiation process (Smolinski, 2010).

The prospect of EU membership can decisively influence other countries, even on issues that are not relevant for accession. However, it loses part of this grip after a country has become an EU member state:

> It is interesting to note that the EU effect is strongest in the stages before countries actually become members. When countries have incentives to reform, in order to be deemed acceptable for membership, the EU leverage may be strongest. Once countries actually become members, Brussels has far less direct influence on countries' behavior (Gray, 2009: 946).

Fedor Meerts and Thassos Coulaloglu came to the same conclusion while comparing the compliance of Estonia, Romania and Ukraine to the EU's demands (Meerts and Coulaloglu, 2012: 306–327). Estonia and Romania were much more willing to work with the High Commissioner on National Minorities (HCNM) of the Organization for Security and Cooperation in Europe (OSCE) than was Ukraine. However, after accession they often prevented certain EU proposals in the domain of human rights from being transformed into proposals to be tabled at the OSCE.

Negotiating enlargement is a very special element in EU negotiation processes (Landau 2004: 199–216). The negotiation processes of the European Union with applicant states – and the internal negotiations that go with it – are of lasting importance, even after the recent extension of the EU with Croatia, for this will probably not be the last country to join. Other states, such as the remaining western Balkans countries of (in alphabetical order) Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia might follow. Given the present phase of 'Eurosclerosis', this might take a long time, while the accession of the official candidate country of Turkey might never happen, either because of 'fatigue' on the side of the Union, or perhaps more likely on the Turkish side.

With the growth in the number of EU member states, any external negotiations will be more difficult to deal with in terms of alternatives to the positions already taken by the Union. These positions will become more rigid than they are today, especially if external negotiations are about issues that will have a profound impact on the EU. The higher the stakes and the larger the Union, the less flexible the position it will take in negotiations with outside actors. This could seriously complicate its dealings with, for example, its transatlantic partners, and the inflexibilities could add to the present rift that has arisen as a result of different political aims and strategies. This process can already be observed when one looks at the difficulties experienced by the Council of Ministers in compromising on its negotiation outcomes to reach consensus with the European Parliament. After internal negotiations, no space is left for further give-and-take. The bottom line has been reached. For candidate members it will anyway be more difficult to accede, as the demands from the EU side have been raised dramatically as a consequence of the accession experiences of the last decade (Phinnemore, 2011: 257).

President of the European Commission José Manuel Barroso has stressed the importance of Europe playing a global role, noting that this could only be realized if the European Union acted in a united fashion (Giegerich, 2010: 197). The EU's external negotiations are multi-level, as are the internal ones. Here we will focus on a few important realms, first of all the European Neighbourhood Policy. This initiative from 2003 is a case of reaching out to minimize some of the negative consequences of enlargement (Gower, 2006: 73), to lower the need for states to become EU members and to attempt to stabilize the regions around the Union. Another level is the negotiation processes with advanced industrialized countries (for example, the G7), with advanced and advancing countries (the G20), and with developing countries (for example, the African, Caribbean and Pacific group of states – the ACP). The EU also participates in the negotiation processes with the UN institutions and the UN family, for example in the World Trade Organization (WTO) (Young, 2003). The result of all this is enormous complexity, one reason being that the internal and external processes of the EU's negotiations are becoming intertwined. Thus, 'In an age of global markets and communications, it is more than ever apparent that the internal and external development of the EU are inseparable, and that the processes of internalization and externalization [...] cannot be avoided (Smith, 2011: 244). This has the consequence of a growing linkage between internal and external EU negotiation processes, creating ever more complexity.

CFSP is one of the most difficult terrains of European policy-making, as it has to be done by consensus. The effectiveness of the EU's external role is hampered by this painful internal negotiation process, notwithstanding the attempt to harmonize and centralize by appointing a High Representative with powers both inside and outside the Council and the Commission, with her own diplomatic apparatus by means of the European External Action Service (EEAS), which is staffed by diplomats of the EU member states and Commission officials under the authority of a head of delegation (Drieskens, 2012: 57). It is an innovative development: 'For the first time in diplomatic history, a non-state actor has created its own foreign service composed of both a central administration in Brussels as well as external delegations abroad' (Petrov, Pomorska and Vanhoonacker, 2012: 1). After a difficult start, the EEAS is slowly but truly taking shape, but European Union diplomacy is still in its infancy and lacks coherence, unity and effectiveness. Nevertheless,

the EU has a role to play and this role is quite special. As Karen Smith states, 'the EU may not be so unique in its choice of foreign policy objectives, but the way it pursues them does distinguish it from other international actors' (Smith, 2003: 199). That is to say, the EU is peaceful and legalistic, it has institutionalized dialogues, including the promise of membership – in principle at least – and supports non-governmental organizations (NGOs). Of course, many countries in this world also pursue this, but not so much in a grouping with others as is done within the European Union.

To measure the EU's influence on the global system of negotiation processes is, however, hard to measure: 'The difficulties in determining whether a desired change has been the result of an EU policy as distinct from other actors or factors are not inconsequential' (Keukelaire and MacNaughtan, 2008: 336). Moreover, 'In practice, the EU's challenge consists of pushing for the most ambitious margin within the realm of realistically possible agreements (while working towards upgrading the ambitious scope of this realm, *inter alia* by means of coalition- and bridge-building)' (Groen, Niemann and Oberthür, 2012: 187). In order to respond to this challenge, unity will have to be accomplished, yet this is the EU's most painful process, where it often fails. The most notable example of this was at the Copenhagen Summit on Climate Change of 2009: 'The failure to speak with one voice [...] weakened the EU's position in front of the international community and gave the chance to other actors to claim for leadership (especially the US)' (Fernandez Martin, 2012: 205).

Michel Knodt and Sebastiaan Princen have analyzed the external relations of the EU as a three-level game in which the 'win-set' – that is, the bargaining range – is shrinking as the negotiations are conducted on a higher external level. They see the 'win-set' as being quite large between the individual EU member states, smaller at the internal EU level and smallest in the international arena (Knodt and Princen, 2003: 57). This vision is in line with the work of the father of 'two-level games', Robert Putnam, who determined the 'win-sets' on three levels as well, although not connecting them to the European Union, which did not exist in its current fully blown version at the time. On the first level, the strategies of the negotiator were of essence; on the second level, the institutions; and on the highest level, the preferences and coalitions (Putnam, 1988: 442).

One way to create a bigger 'win-set' in the EU's negotiations with outside powers is to strengthen the corps that deals with its foreign policy: the EEAS. This could be done through collective training, but, according to Simon Duke, this training should be content-driven, while 'inculcating an *esprit de corps* [...] should not be the primary purpose of any training design or execution' (Duke, 2012: 114). David Spence, on the contrary, is in favour of training to further a sense of 'Europeaness' among the negotiators representing the Union: 'Until the European Union's diplomats and European national diplomats "sing a song from the same hymn sheet", diplomatic effectiveness will be a hard call' (Spence, 2012: 133). 'Yet, the overrepresentation of Europe in many international institutions would further exacerbate if the European Union managed to increasingly "speak with a single voice" by way of more competences and coordination' (Gstöhl, 2009: 403).

Strategies and Tactics in EU Negotiation Processes

Andreas Warntjen distinguishes four modes of decision-making that are employed by EU member states and institutions (Warntjen, 2010: 655–679). The first mode is distributive

bargaining: 'In this mode, actors aim to elicit as many concessions from their negotiation partners as possible, while making as few as possible themselves' (Warntjen, 2010: 667). The second mode is cooperative exchange, or trade-offs and package deals, which are also labelled integrative bargaining or value creation. The third one is norm-guided behaviour: 'Through a process of socialization, actors internalize norms which become part of their identity and prescribe appropriate behaviour for certain types of situations' (Warntjen, 2010: 670). This mode can also be named 'Brusselization', as the dynamics of the processes in Brussels force negotiators to adjust and thereby become more ready to wheel and deal. Warntjen's final mode is deliberation: 'deliberation establishes through truth-seeking discourse what "the right thing to do" would be' (Warntjen, 2010: 670).

What factors determine the choice of strategies and tactics? Stefanie Bailer suggests that voting power, economic size and domestic constraints create the context in which negotiators have to operate (Bailer, 2010: 743–757). Negotiators will look for opportunities to form coalitions to strengthen their power, they will lean on the institutional power that they have and use skilled negotiators who are well informed, working on as many levels and with as much frequency and reciprocity as possible in order to create optimal effectiveness and defend the interests of their country or institution. Madeleine Hosli and Christine Arnold add to this the following observation: 'Negotiations on the European Constitution are found to be determined less by general transnational left–right divisions, but cleavages according to the length of EU membership and the size of the EU member states' (Hosli and Arnold, 2010: 615). Whether this is a rift to be found in other EU contexts remains to be seen, but it does indicate what kinds of factors the EU negotiator has to struggle with in attempts to bridge gaps through strategies and tactics.

Thomas Risse and Mareike Kleine look at strategy and tactics in EU deliberations from a different angle (Risse and Kleine, 2010: 708–726). They ask themselves '[w]hich institutional scope conditions are conducive to arguing to prevail in multilateral negotiations and, thus, to affect both processes and outcomes?' (Risse and Kleine, 2010: 711). They propose five conditions that will strengthen the chances of persuasion as a tactical tool in EU negotiation. The first proposal is that the likelihood of arguing leading to persuasion will be enhanced in situations of uncertainty. To them, uncertainty will be generated, among other things, by institutional settings, which favour overlapping identity roles. Second, they state that a transparent negotiation will also be conducive to persuasion, especially if the negotiators are uncertain about the preferences of their constituency. Third, if they are more aware of the preferences of their audiences, they will prefer secretive negotiations. Fourth, arguing will lead to persuasion if expertise and moral competence buttress institutional norms and procedures. Finally, the neutrality of the chair will help to persuade the other negotiators through argumentation. However, after studying the 1996–1997 Intergovernmental Conference and the Treaty of Amsterdam, as well as the European Convention starting in 2002, Risse and Kleine could not find enough indications to support the above-mentioned proposals.

Andreas Dür and Gemma Mateo have attempted to set the stage for future research by clarifying the question of whether negotiators will employ tough or lenient strategies and tactics (Dür and Mateo, 2010b: 680–693). They hypothesize that those who are powerful and not eager to reach an outcome as they are in a position of loss, and/or have recently acceded to the Union (in other words, they are not yet 'Brusselized'), will opt for a

hard bargaining approach. Those who are from a collectivist culture, however, and have a diplomatic tradition that stresses consensus, will be more inclined to use 'soft' bargaining strategies and tactics. They signal the problem of proving this through empirical research, as access to interviewees is often difficult (Van Es, 1996: 275–284; Meerts 1997a; and Elgström and Jönsson, 2005). Moreover, the problem of researchers having access to actual negotiation processes and the negotiators themselves was already noted in the first chapter of this treatise.

Heather Elko McKibben approaches the issue from another angle. She analyzes strategic and tactical behaviour on three axes: high versus low politics issues; zero-sum versus positive-sum issues; and the salience of the domestic issue, as well as in cases of the polarization of issues (McKibben, 2010: 694–707). She hypothesizes that states are more likely to adopt 'hard' bargaining strategies when they are negotiating over high politics issues, when the negotiation takes place in the context of an intergovernmental conference (IGC), when the issues are of a foreign and defence policy nature, if they are zero-sum in nature, redistributive, distributive of quotas or commitments that must sum to some fixed amount, and if the issues are domestically (that is, electorally) salient. 'Soft' bargaining strategies can be expected if the valuation of issues is different for the negotiation partners, if the issues are very complex, if the set of issues is positive-sum in nature, and if they are on the level of low politics.

Daniel Naurin also undertook something comparable to this. He launched a survey among representatives of all the EU member states, making a distinction between arguing and bargaining. Naurin regards arguing or deliberation as a kind of soft integrative explorative bargaining, while bargaining itself is seen as much more distributive behaviour. He found that 'deliberation seems to be present during less politically heated conditions [... but this was] substituted by bargaining when the process came closer to a sharp decision-making stage' (Naurin, 2010: 33).

The Future of the EU Negotiation Process

The EU started as a confidence-building measure between the French and the German Federal Republic after the Second World War. Both countries wanted, through an economic arrangement (the European Coal and Steel Community), to prevent another war in Europe by creating a stable and secure situation, with economic benefits as a spin-off. Germany and France needed neutral partners to help them forge a durable balance, so Italy and the three Benelux countries (Belgium, the Netherlands and Luxembourg) stepped into the process. This multilateral framework for international negotiation has been expanding ever since. The Union has also enlarged its membership.

The European Union is broadening in two ways: by multiplying its policy areas; and by the number of partners to be integrated. New countries have entered the EU in several waves: Denmark, Ireland and the United Kingdom in 1973); Greece in 1981; Portugal and Spain in 1986; and Austria, Finland and Sweden in 1995. The fifteen members then decided to accept ten new members in 2004: Cyprus; the Czech Republic; Estonia; Hungary; Latvia; Lithuania; Malta; Poland; Slovakia; and Slovenia. In 2007 Bulgaria and Romania entered, while Croatia followed in 2013, with Iceland the next in line (although Iceland suspended accession negotiations in September 2013). Turkey has been a candidate member for a

long time already and preparatory negotiations for its membership are continuing, but actual membership is not foreseen and might never occur because of developments in Europe and Turkey alike. The EU may end up with some 35 states in the first half of the twenty-first century by absorbing the remaining countries of the western Balkans, although (as stated earlier in this chapter) this will be a slow process because of the ever-tougher membership conditions as a consequence of rising xenophobia in the Union, which is fed by an economic crisis, corruption and underdevelopment in the candidate countries, as well as the growth of minorities within the member states. Nevertheless, some see a need for further enlargement encompassing all of the countries in Europe apart from Russia (De Zwaan, 2013).

The EU is not only broadening its horizons, but is also deepening its cooperation in two ways: by covering more and more aspects of the categories that it sees as its domain; and by strengthening the EU institutions. The supranational elements such as the European Commission, the European Parliament and the European Court of Justice are being strengthened, as are the intergovernmental bodies such as the European Council of heads of states and government leaders, the Council of Ministers and the whole range of working groups and committees that are served by negotiators from the public and – to a far lesser extent – the private sector. It also forces itself to integrate further. By taking the decision to have the Eurozone countries – a European Monetary Union with the euro as the common currency – the EU speculated on the future. Knowing at the turn of the millennium that not all of the conditions could be met to have a stable monetary zone, it trusted in the shadow of the future, but did not foresee the American banking crisis and its consequences for Europe. Becoming entrapped, the Eurozone countries decided to move forward by creating a common European Banking Union to be supervised by the European Central Bank in Frankfurt, as well as a European Financial Stabilization Mechanism. The negative developments were thus used for a positive purpose, if one values further integration into a political union through a banking union as positive.

How strong will the EU be, internally and externally? According to Casper van den Berg,

> […] power is increasingly shared across multiple levels of governance rather than centered just at the national level, power is increasingly shared between state actors, semi-state actors and non-state actors, […] institutional relations are increasingly determined through negotiations and networks [… and] the strictly hierarchical and top–down ordering of levels of governance is decreasing in importance, in favor of relatively more equal power distribution between tiers of governance (Van den Berg, 2011: 371).

The EU negotiation process might become so complex that it may, in itself, be an obstacle to further integration, a phenomenon that can be observed on a global scale as well (Hale, Held and Young, 2013). At the same time, however, the possibilities for integrated solutions will be on the rise. The result could be a new balance, where the EU will continue to grow as a system and a process that will be larger than the sum of its parts. At the same time, there will be important issue-areas where the convergence of interests will remain extremely difficult, such as foreign and security policy. This disparity could develop in terms of an internal and an external position of the Union. Internally, more power and

possibilities will be generated. Externally, the Union may remain what it is today, or may even regress slightly: a coalition that cannot get its act together.

Alain Guggenbühl, in an interesting contribution to *The Hague Journal of Diplomacy*, attempts to predict some patterns of multilateral decision-making by reviewing trends in the 'Culture of Negotiation in the European Union' (Guggenbühl, 2013: 21–47). He postulates that the 'negotiation patterns of general consensual cooperation are likely to remain unaffected by the Lisbon Treaty as their logic has persisted over previous enlargement and institutional changes to the voting system. Even the forthcoming enlargements of the European Union should keep these trends' (Guggenbühl, 2013: 27). Intensification of the trend of interested consensus-building can be expected (Guggenbühl, 2013: 32), for example, because of ongoing mechanisms such as 'circular barters', 'log-rolling' and 'diffuse reciprocity'. Under the influence of the Balkan countries, it is expected that 'negotiations among member states (are) becoming influenced to a greater extent by political rationalities protecting fundamental domestic values. This could lengthen deliberations and deal-crafting in the Council' (Guggenbühl 2013: 37). The role of the Presidency will be more valuable, but if the Presidency does not fulfil that role, a '*Directoire*' of the larger member states is likely to guide a multi-tiered European Union (Guggenbühl, 2013: 42). As a fifth trend, 'the Council's diplomatic culture is predicted to intensify in order to absorb the wider global interests and political rationalities of the negotiations' (Guggenbühl, 2013: 45).

Concerning these wider global interests, the question can be asked of whether a greater grip by the EU on its international relations might help it to represent and defend these global interests more effectively. Some experts comment that 'in practice, the EU's challenge consists in pushing for the most ambitious margin within the realm of realistically possible agreements' (Groen, Niemann and Oberthür, 2012: 205). The problematic word here, of course, is 'realistically'. If the EU overestimates itself while ambitiously striving for the best possible outcome, it might lose face if these ambitions cannot be fulfilled. Striving towards an enhanced role for the EU in the world might be supported by further integration and enlargement of the Union's competencies in its external negotiations.

However, a recent study:

> […] has demonstrated that it is too simple to assume that more EU competence in external relations will automatically result in more EU unity and negotiation effectiveness. Just expanding EU legal competences and imposing a supranational EU external representation may not lead to the EU becoming a more effective negotiator (Van Schaik, 2013: 209).

This seems to be true for other international organizations as well. Expanding competencies is not enough, not even for powerful blocs like the European Union. Equally important is the question of *how* negotiators are organizing themselves. The poor performance of the representatives of the Southern African Development Community (SADC) in trade negotiations with the EU was mainly because of 'their own disarray […] In other words, judicious agency still matters, particularly for small states' (Vickers, 2011: 195). In the area of CFSP, a pragmatic solution for the European Union might be for member states to agree – without changing the formal rules – to consensus minus a tiny minority. If the

overwhelming majority decides to act, a small minority should not be allowed to block a decision on external action (Van Staden, 2013: 56).

In Conclusion

Negotiation processes in the EU are very divergent. Daniel Thomas and Ben Tonra tried to wrap it all up by distinguishing between seven modes of policy-making and their consequences for negotiation (Thomas and Tonra, 2012: 27). The first mode is competitive bargaining as a consequence of the veto threat, thus coming to closure by the lowest common denominator: deadlock or non-decision. The second and sixth modes are log-rolling, originating from reciprocity, and 'Europeanization', emerging from the internalization of EU norms, which are both concluded by a rather indeterminate agreement. The third mode is cooperative bargaining, originating from the application of EU procedural norms resulting in median compromises. The fourth model is normative entrapment, under the influence of substantive norms and policy commitments, creating a policy outcome that is consistent with prior commitments. The fifth is 'Brusselization' as a consequence of the socialization of EU elites and because of the expanded authority of Brussels institutions. All of these outcomes are highly formalized vague compromises. And last but not least, the seventh model is identity formation, which originates out of the definition of self and distinction from others, resulting in agreements that are consistent with the common narrative of the parties.

The European Union's negotiation processes that are analyzed in this chapter on the twenty-first century might be sufficient for managing the common and diverging interests of the EU countries in the first quarter of this century. After that, however, they may hamper further integration in the multi-level governance system that we call the European Union. Some argue that the complexity of the process will anyway lead to 'gridlock' (Hale, Held and Young, 2013), while others (Kibris and Bac, 2011) are of the opinion that it is 'not the numbers of members *per se* but whether they have diverging interests' (Kibris and Bac, 2011: 400). Regardless, by its inherent nature, the EU negotiation process has – and will have – an enormous impact on the workings of the national negotiations within its own member states, as well as on international negotiations at the global level. The classic international negotiation processes as we have known them since the mid-seventeenth century will change dramatically because of globalization and regionalization, as is the case with the European Union.

The individual EU negotiator will probably become an even more important asset as the process becomes ever more complex and non-transparent. If this is true, the inevitable conclusion is that the European Union and its member states will have to invest more in the human dimension, for example by transforming the current, very modest, European diplomatic programme into a fully fledged training curriculum, or even establishing a European negotiation academy for diplomats and other civil servants. Such an academy would at least have the advantage of being able to enhance the level of the negotiations, to familiarize the new breed of EU diplomats and civil servants with EU-specific negotiations, to create a network within the group, and, most importantly, it might help to create a European diplomatic professional culture. Creating one professional culture will have a

positive effect on the stability and effectiveness of negotiation processes (Sjöstedt, 2003: 245).

There appears to be a need to harmonize policy-producing organizations, most of them ministries. Negotiation will be smoother if the institutions involved are more or less comparable in structure. This may also encompass the creation of uniform EU-coordination agencies in all of the EU member states, either as part of ministries of foreign affairs, or as separate ministries of European integration. It should be added, however, that separate ministries could create more bureaucracy, and experiments with this in some of the aspiring member states have not shown very positive results to date.

It seems to be unavoidable that the larger EU member states will have to take special responsibility for the efficiency of the negotiation process through enhanced cooperation among them, even in a formal sense. They already work much more closely together than their sometimes hefty disagreements on issues such as CFSP might suggest. More guidance for the EU by the major EU powers will, of course, demand a better cooperative process between the three (France, Germany and the United Kingdom) or the six (France, Germany and the United Kingdom, plus Italy, Poland and Spain) major players in concert with the Commission, the Parliament, and the smaller EU member states in the Council of Ministers.

It might be that the member states of the European Union can hardly escape further integration of EU negotiation processes if they want to survive in the world outside Europe, however euro-sceptical their populations might be. Yet it could also be true that the EU cannot escape globalization of the process of international negotiation and will have to adapt to this trend by taking more responsibility in the realm of conflict resolution through international negotiation. After all, the European Union negotiation process may be an enigma, but it is very much a part of the overall negotiation processes that are needed to run world affairs in a peaceful and effective way. Negotiation is thus a central element in international relations, deserving attention from practitioners and theoreticians alike. The role of the diplomat will be scooped out, but diplomacy will stay. It will continue to fulfil its function 'as a practical mode of conducting international relations, as a "torchbearer" […] and as a "thinking framework" about international politics' (Bjola, 2013: 19), even in the European Union. What can we expect from the EU as a player in its own right, especially in global politics? According to Jan Rood, for the EU to play an effective role in global politics, it should become more coherent in its external actions, should have a common vision and strategy, and should take responsibility and lead where applicable, both through negotiation and – if needed – by deploying military power (Rood, 2013: 14).

CHAPTER XI

Simulating Diplomatic Negotiation

CHAPTER XI: SIMULATING DIPLOMATIC NEGOTIATION

Diplomatic negotiation processes can be simulated to provide the analyst with further insights into their character and conduct (Zartman, 1982: 9). Analysts in diplomatic negotiation have a problem as far as the observation of reality is concerned. This was elaborated upon in the first chapter of this book, where the cleavages between practitioners, researchers and trainers were discussed. Observing a simulated process can therefore be of great help. A simulation is an artificial structure that mirrors reality as much as possible, allowing the process of negotiation to be analyzed. In principle, people act in simulated processes as if they are negotiating in reality. In that sense, the process is as realistic as it can be. The characteristics of negotiation still apply. This is why university professors are often satisfied by analyzing the performance of their students, as was shown at the inaugural meeting of the Netherlands Negotiation Network (Meerts, 2009a: 17). However, simulations and games can also be useful to instruct the wider public in the usefulness and the mechanics of negotiation processes, for example through board games like 'Diplomacy' (Sharp, 1978), which can also be used for scientific analysis (Falger, 1994: 269–284) or just for political/historical entertainment (Meerts, 2008a).

Simulating is a technique of studying and experiencing processes and systems if reality does not allow for such experiments. Moreover, it is about a dynamic model, not a static one (Lipschits, 1971: 11). The source for modern simulation techniques has been war-games, allowing the military to experiment without inflicting damage on people and the environment. Chess can be seen as the oldest war-game, as a metaphor for war, allowing players to practise strategy and tactics on a limited scale in limited time. Since the 1950s, social scientists have been experimenting with various representational techniques in the study of international relations (Winham, 2002: 466). War-games can be divided into rigid and free variants. The free variants could also be labelled role plays. The simulations described in this chapter can be classified as role plays that allow for an analysis of diplomatic negotiation processes. These simulations can be very close or very far from reality. Being close to reality, and especially present-day reality, will help participants in such exercises to understand the game and therefore to negotiate as realistically as possible.

Conditions for the creation of a viable role-play simulation (Meerts, 1989: 135) of international negotiation processes are:

1. Selecting relevant issues that will probably not be resolved by the time the game will be played;
2. Writing a scenario and individual instructions on the basis of an internet search, foreign policy documents, journals, newspapers and interviews with policy-makers;
3. Introducing the simulation through lectures and literature, as well as by applying short exercises to prepare participants for the overall game;
4. Participants can be asked to write position papers, which will be discussed before the actual simulation starts;

5. These position papers can be used to inform other delegations about the content of the positions, which allows strategy and tactics to be prepared;
6. Debriefing on process, people and positions, and if possible comparing the content of the final outcome with a real-life document (Meerts, 2009d: 663–665).

It should be noted that it is important to distinguish between different types of participants who are in need of different kinds of simulation exercises (Meerts, 2002: 456). To be effective, it is necessary to prepare the simulation game through exercises on aspects such as negotiation effectiveness and style, culture and non-verbal behaviour, strategy and tactics, and bilateral and multi-party bargaining (Meerts, 2014a). The additional advantage of simulated diplomatic negotiation processes is their value in preparing diplomatic actors for the real negotiations in which they have to defend the interests of their countries. Because of its characteristics – learning by doing without the damaging effect of a failed negotiation in real-life bargaining – simulations function as an invaluable asset in training diplomats (Crookall, 1987; Stein, 1988; Boomen *et al.,* 2001; Hemery, 2005; Movius, 2008; Mans, 2010; Meerts, and Schalker, 1986; Meerts, 2012a, Mühlen, 2014).

For this chapter, three angles have been chosen in order to gain some insight into the viability and use of role-play simulations in understanding diplomatic negotiation processes and negotiators' behaviour. One angle is the role of the chairperson in such a process, as the chair is one of the main actors in diplomatic negotiations, helping to bring them to closure. The first part of this chapter thus analyzes the chairperson's role in simulated processes and in reality. The second part is on bilateral negotiation. This simulation exercise is of a special kind, a so-called 'table-top exercise', normally used in serious war-gaming, and in this case as a tool to experiment on processes to detect – illegal – underground nuclear testing. It was developed by the staff of the Preparatory Committee of the Comprehensive Nuclear Test-Ban Treaty Organization (CTBTO) in Vienna. By simulating the process, inspectors can be trained for real expeditions, the outcome of which will be reported to the Council of the CTBTO as a basis for their negotiations on decisions to be taken against perpetrators. The third part of the chapter presents a so-called 'Hexagame', which was developed by staff of the Clingendael Institute to confront diplomats and scientists of the Organization for the Prohibition of Chemical Weapons (OPCW) in The Hague with the consequences of their decision-making in the five years after the simulated situation.

UNILATERAL LESSONS FOR CHAIRING

The chairperson in multilateral negotiations is an important factor in diplomatic negotiation processes, although the role of presiding officers should not be overestimated. According

This section on 'Chairing' is based on Meerts (2009b), with additional insights from training sessions aimed at preparing UK and Polish diplomats and civil servants for their EU Presidencies with John Hemery in 2004–2005 and Wilbur Perlot in 2009–2010.

to Kaufmann, the importance of a chairperson's role is dependent on his or her experience, intelligence and grasp of the rules of procedures, the homogeneity of the actors in the negotiation group, as well as the chemistry between the chair and the secretariat, the rapporteur, etc. (Kaufmann, 1996: 71). The role of the chairperson is, of course, different according to the context in which he or she is operating. In the Security Council and the General Assembly of the United Nations, the chair has hardly any power and influence outside regulating the meeting in an orderly way. In the European Union, however, chairpersons do have some power and influence, and not only the President of the European Council, but also the rotating chairs of working and other groups. The first part of this chapter will therefore focus on the role of the chairperson in the European Union, as she or he has a more important role to perform than in other international forums. It should be noted that this disquisition could have been undertaken in the preceding chapter, but as it is such a specific topic based on direct observation, it was decided to integrate it into this chapter dealing with the behaviour of chairs and negotiators.

In a 2006 issue of *The Hague Journal of Diplomacy*, Jonas Tallberg analyzed the function of the chairperson in the European Union in managing the agenda, brokering deals, as well as representing the negotiation party to outside groups (Tallberg, 2006: 121–140). Tallberg focused on the chairperson's power resources: privileged information and procedural control; the options for the chair to exploit the chairmanship for private gains; and the positive and negative effects of the formal institutional environment. Tallberg concluded that the chairperson plays a vital role in multilateral negotiation processes as an instrument in managing complexity, as he or she is able to draw on their inherent legitimacy. In the journal's same issue, Ole Elgström summarizes some of the major characteristics of the EU chair: Presidencies sometimes have difficulty in taking a leading role; chairpersons-as-leaders prefer to act as entrepreneurial leaders; if they are defending their own interest they stress that this need is also in the EU's interest; while they will be criticized if they do not live up to the norms of being the chairperson, although this will not have long-term consequences (Elgström, 2006: 193). Also in the same issue, John Hemery and Paul Meerts conclude that their training of diplomats and civil servants for the United Kingdom's EU Presidency showed that thorough preparation is absolutely essential, as is the ability to handle time and procedures effectively, while individual and common interests will have to be balanced carefully (Hemery and Meerts, 2006: 206–208). As the chairperson has a central role in simulated diplomatic negotiations, this sub-chapter will further analyze its role.

What is it like to be an effective chairperson of international negotiations? Although there is literature on chairing meetings, publications on effective leadership of international multilateral bargaining are in very short supply. However, as EU member states feel that it is important to train diplomats and civil servants in preparation for their country's next EU Presidency, there have been some recent attempts to gain a better understanding of effective chairing in an international context. For example, the College of Europe, the European Institute of Public Administration (EIPA) and the Clingendael Institute have organized large-scale training session to give EU negotiators a more thorough insight into target-oriented chairing. These seminars have revealed many important aspects of negotiation chairing, as the participants were people with great experience

in EU negotiation processes. The seminars involved introductions on the subject matter, discussions, workshops, simulations and debriefings.

The following issues came out of the discussions. Effective chairpersons should prepare thoroughly. The chairperson must know the subject matter as well as the participating countries' positions, and must analyze these so that they are able to identify common ground. Ideally, the chairperson should have a draft agreement in his or her pocket before the negotiation starts. Knowing the positions is not enough. Information on the needs, bottom lines, possible concession patterns and specific problems concerning the negotiators' home front will help greatly. The chairperson should understand what the real problems are, who is going to negotiate, and how the negotiation might develop. The 'how' is very important indeed. During the planning phase, the chairperson will need to think about his or her main strategies and the tactics that go with it. Knowing the procedures is, of course, an important point, but knowing how to handle them effectively is even more important. In addition, of course, the chair will have to communicate – or at the very least have – a thorough understanding of the agenda.

During the face-to-face stage, the chairperson will need to manage the agenda in a subtle way. He or she must be firm in sticking to the agenda points, without becoming too rigid. The chairperson must show impartiality and fairness. In the European Union, this is achieved by separating the chair from its country's position. A state delegation will represent the interests of the country, while the chairperson remains impartial. This implies, however, that the delegation cannot separate itself too much from the chair, which has a moderating effect on its position.

Chairing in the European Union

In the European Union, the chairperson of the working groups will need to rely heavily on the Council Secretariat for support. In other forums, the creation of a 'friends-of-the-chair' caucus is often a vital element for success. To start a meeting by giving the floor to these 'friends' creates a cooperative atmosphere that is instrumental in setting the stage for a collaborative negotiation process. Managing time is vital. The chairperson will usually have to instigate a first phase of exploration to search for options that might lead to a synergetic and integrative outcome. This puts a lot of strain on the chairperson, who will have to see to it that the process moves in a certain direction, while at the same time avoiding premature outcomes that might forestall the agreement of more effective package deals. Setting clear objectives, having a good ear, using effective communication and keeping an eye on possible changes are vital in the context of the negotiation to keep the process under control. The extent to which pulling and pushing tactics are effective tools in any situation is the prerogative of the chairperson. An assertive chair is certainly an asset, but a bulldozing president is a nuisance to the negotiations – impartiality creates the legitimacy that the chairperson needs to be accepted as an honest-broker.

As negotiations move in the direction of an outcome, the chairperson will need to strike a balance between his or her own interests and those of the collective whole. It has already been noted that impartiality is important. However, complete neutrality leaves the interests of the country represented by the president virtually undefended. During the United Kingdom seminars, participants played the Clingendael 'Pentagame' in which

they had to rotate into the chair every twenty minutes. This proved that chairing could be a serious obstacle to effective negotiating. In one of the games, all of the chairs pushed forward the possible package deals like hot potatoes, delaying decision-making until they were relieved of the chairmanship. The effect of this was failure to reach a collective decision. In other words, the fear of losing too much in terms of individual interests through being responsible for a collective outcome blocked that very outcome. This created an interesting dilemma, as it implies that there will be more assured outcomes if chairpersons can legitimately maintain reasonable resistance to attempts to undermine their national interests. Complete neutrality is therefore just as damaging as one-sidedness. This raises the question of fairness and effectiveness and how these should be defined in connection with assured and unassured outcomes.

Participants learned that it was vital to hold the chair when the process was getting close to ripeness and that they should be able to take a strong national position again at the time of decision-making – thus avoiding being the chairperson at that moment. As this was not always possible, countries with extreme positions ran into difficulties. They therefore tried to push more moderate state representatives into the chairpersonship at the decisive moment. They also learned that a chairperson still has to protect his or her own interests without becoming unfair – this fine-tuning was of vital importance, both to effective chairing and effective negotiating, as they had to be merged within the behaviour of one person.

Four stages could be observed in chairing simulations of international negotiations: (1) the chairperson has to set the stage; (2) options must be explored in relationship to countries' positions; (3) the 'pre-decision stage', where packages were made ready for decision-making; and (4) decisions are finally hammered out into agreements. These stages should be observed, or the negotiations will end in mayhem with outcomes not being secured.

It can thus be stated that the chairperson is a negotiator with a specific role, or, to put it another way, a chairperson has the dual role of negotiator and mediator. His or her task is, first, to take responsibility for a collective process that will end with an acceptable outcome. To perform his or her role well, the chairperson will need to be fair. Fairness involves a substantial degree of impartiality, but at the same time, the chair has a responsibility to his or her own country or organization, the home front, so the interests of that party should not be too greatly neglected. As in mediation, impartiality is vital, but neglect of self-interest is fatal. The chair will thus need to balance these two contradicting roles using processes and procedures to maintain an acceptable equilibrium, and getting parties and people to accept him or her as the pilot of the negotiation process. Chairing an international negotiation process is mediating while negotiating. The chairperson is a mediating negotiator.

Representing both national and collective needs in a balanced way also depends, of course, on the nature of the processes and the procedures of the platform on which these negotiations take place. In the United Nations Security Council, the chairperson really has to combine collective and individual interests. The same is true for the EU Council Working Groups, but here at least a second representative will speak up for the chairperson's country position so that the president does not need to do that him or herself. In other

international organizations, chairpersons are drawn from the ranks of international civil servants and can therefore be more independent as leaders of negotiation processes.

All negotiations in international organizations and all multilateral conferences are chaired by member state representatives or supranational officials who have mandates to manage the agenda, structure the deliberations, and broker agreements. Yet the existing literature offers no coherent explanation of the sources of this institutional practice and its effects on negotiation outcomes (Tallberg, 2002: 2). It is indeed striking that literature on chairing negotiations is virtually absent, although we know of some insights (such as Lang, 1989; Kaufmann, 1996; Guggenbühl, 2004; and Meerts, 2005a).

Effective Chairing

Four elements of effective chairing can be distinguished, and chairpersons operate at each of these levels, which run parallel during the whole process of negotiation: *managing substance*; *procedure*; *process*; and *behaviour.* Although all four dimensions will have to be managed at any one time, there is a certain shift in intensity as the negotiation evolves. Procedure is a main issue at the beginning of the meeting (what are the rules and regulations?) and at the end (are we deciding by unanimity, consensus, or simple or QMV?). Managing the process pops up at regular intervals, especially if the negotiation becomes tense, for example, if a crisis is imminent. While the management of procedure and process is mainly done in and around the plenary sessions, people management is very much a question of lobbying. Chairpersons will have to be available to negotiators before, during, after and around the negotiation process. Issue management has to be done at all times, of course.

Managing substance is the aim of the negotiation process – the negotiations are conducted in order to achieve an outcome. For the chairperson, it is essential to have a thorough knowledge of the dossier with which he or she is dealing. The history of the issues has to be understood by the presiding officer, who will have to be capable of explaining the dossier's background to those negotiators who are new to the process. To acquire such a thorough knowledge, the chairperson will have to work closely with the secretariat of the conference and/or working group that he or she is managing.

Planning is of the utmost importance. It should be noted that effective planning can be done only if the chairperson is aware of the priorities of the countries involved and the possible concessions that they will be willing to make. Without understanding the rank and order, the chairperson will never be able to set a relevant agenda. As the negotiation process moves on, the chairperson should divide the substance into digestible parts – to put together bits and pieces into acceptable packages – and to know what to throw out if certain sentences appear not to be negotiable.

Understanding the problems and possibilities regarding substance gives the chairperson a chance to do some 'preventive' guidance. He or she should try to move unnecessary obstacles if possible, preventing any loss of face on the part of the national delegations on the substantive issues relevant to them. One of the major issues here is the need to have a thorough understanding of the position and interests of the chairperson's country.

Chairpersons have to coordinate their own delegation but should not identify with its needs. Chairpersons have to be fair, but their complete neutrality cannot be expected. After all, the chairperson's own delegation should not be defenceless, but the delegation should also be aware that it cannot take a very outspoken position without undermining the legitimacy of its fellow compatriot who is chairing the meeting.

It is understood, however, that it is much easier for chairpersons to be impartial if the interests of their delegation are close to the common ground of the negotiation (Tallberg, 2002: 31). This is why chairpersons from powerful countries are often not as effective as those from smaller countries that have less of a conflict of interests. Denmark, Finland and Ireland thus did a much better job in their roles as rotating Presidents of the European Union than France, Germany and Italy. It is difficult to strike a balance between the distance that a chairperson should take from the position of its own government: too far out weakens a chairperson's position, making it impossible for the chair to fall back on its own national delegation, but too close a relationship provokes interventions by the chairperson's government, leading to micromanagement by the home front – that is, bureaucrats meddling in the negotiation process and thereby, perhaps, hampering it.

Mastering procedure means being very well aware of the rules and regulations of the organization and the conference over which the chair is presiding. Here, the secretariat steps in again. After all, its members have a thorough and continuous insight into the procedures and their effectiveness. The chairperson will have to be firm, especially at the outset of the negotiation process, in implementing the procedures that have been decided upon. Yet at the same time, the chairperson has to be flexible in implementing them – assertive, but not unnecessarily bureaucratic. Culture plays a role in adherence to a strict or loose procedure. The chairperson will have to take into account that in some cultures procedure is not considered to be a very important facet of the negotiation process; it might even be seen as an obstacle to a smooth process. In other cultures, however, procedures are essential for saving the face of the chairperson and the negotiators. Rituals play a role in avoiding risk, which is especially important in collectivistic societies.

The stronger the institution, the more outspoken its rules tend to be. Paradoxically, however, the more integrated the organization, the less the need exists for strict rules. The continuity of the negotiating body, and the standards and values that it develops, create mutual understanding among negotiators, making life easy for the chair. Negotiators then 'automatically' adhere to the rules. There is no need for the chairperson to impose them. Trust also plays a role here: the more trust, the fewer rules are needed to protect the negotiators and the negotiation process. On the other hand, the procedures can be seen as a tool for the chairperson to use to compensate for a lack of trust.

Finally, there is the point of the decision-making procedure, which is different from organization to organization, and which has a decisive impact on the outcome of the negotiation processes. If unanimity or consensus is the rule, it will be difficult for the chair to reach substantive outcomes. If (qualified) majority voting is the decision-making procedure, however, the majority can outvote the minority, although the chairperson will, most of the time, conceal this by stating that he assumes that there is consensus. Those who are aware that they will be out-voted prefer not to show this to the public, so we then have the shadow of the vote: when there seems to be consensus, but it has been forged by the threat of an overruling majority. The chairperson can hence more easily

push for substantive outcomes. We also have mixed systems here, of course, as applied, for example, in the United Nations Security Council.

Managing the process is itself one of the best tools that chairpersons have at their disposal for reaching assured outcomes. If the chairperson mismanages the process, fruitful outcomes are hard to reach, so they have to be conscious of the most effective sequence of that process. If certain issues are decided upon too early in the process, more effective package deals might be blocked. Sub-optimal outcomes will be the result. Chairpersons thus have to allow for a stage of exploration, and culture comes in again here. In some cultures (such as Japan), the give-and-take is seen as a dangerous part of the process. The chairperson thus has a special task to protect the face of the negotiators, to be aware of so-called 'salami tactics' and the development of an entrapment situation. They also have to ensure that the process will be even-handed.

Management the end-game might be the most difficult job facing a chairperson. They have to use insight, knowledge and intuition. Is the time ripe for decision-making, is there a 'mutually hurting stalemate' (push) and a 'mutually enticing opportunity' (pull)? It is essential for the chairperson to keep an eye on the context of the negotiation process. It is all a matter of timing, but political developments may also further or hamper progress of the process. Here, again, the availability of the chairperson is essential, both inside and outside the actual process of negotiation.

Managing behaviour assumes that the chairperson should have some psychological competence and therefore diplomatic skills. The style of the chairperson is important here. Does the chairperson have an action-oriented style, or perhaps process-oriented, people-oriented, or idea-oriented? Can they adapt their overall style to the situation in which they find themselves? The same is true for their leadership style. Are we dealing with a dominant, avoidant, accommodative, compromising, or collaborative chairing style? And again, can the chairperson adapt his or her leadership style to the circumstances? The chairperson will have to develop formal and, especially, informal relationships with negotiators and also with their own delegation and the authorities back home. The atmosphere of the negotiations will have to be influenced by the chairperson in a way that will enhance the chances of a successful process. Being emotional is counterproductive, but not being empathetic will not make for a favourable climate in the negotiations either. The behaviour of the chairperson will be characterized by the different roles that he or she performs. Jonas Tallberg distinguishes the roles of a chairperson as representing the negotiation group, as an agenda-seller, and as a broker/mediator (Tallberg, 2004). The chairperson will have to be fully committed to the task, but over-commitment can be a burden for the group. Again, a balance will have to be struck.

Finally, the *behaviour* of the chairperson will have to be characterized by their ability to apply the most effective techniques. For example, a Dutch chairperson once applied the technique of writing a draft of his own as an informal alternative to the official text, which was marred by thousands of brackets. He said that every change was welcome, but only after consensus. Brackets were not accepted. After a few weeks, negotiators replaced the official text with the chair's informal draft as a final document. A less effective technique is the preparation of a final draft in consultation with only some of the negotiators. This raises suspicions among those who are left out, thereby lowering trust in the chair (Hauck, 2005:8).

BILATERAL LESSONS FOR PRACTICE

The Comprehensive Nuclear Test-Ban Treaty (CTBT) has not yet been ratified by a sufficient number of countries and thereby cannot be implemented. However, experts and diplomats should already prepare for the moment when the treaty will come into force as an internationally accepted instrument of control. Training on this topic will allow them to take action immediately. If they only start to deal with the matter once the treaty has been ratified, costly time will be lost, and time is of the essence in dangerous nuclear circumstances. In order to prepare for this situation, a simulated inspection mission to a simulated country was thus developed, as the actual process cannot yet be experienced. In essence, the process is bilateral: between the CTBTO (the not-yet ratified Comprehensive Nuclear Test-Ban Treaty Organization) – which is only a Preparatory Committee at the moment – and a host country that is suspected of violating the treaty by illegally exploding a nuclear device underground. The simulation exercise, which was named 'Table-Top Exercise' as it is played in different scenarios around a table onto which a map of the area has been projected, is a negotiation between an inspection team on the one hand and an inspected team of the country in question on the other, a so-called 'on-site inspection'. Although the negotiation is bilateral, there are, of course, internal negotiations in each of the two teams. A control team acts as game master.

The effectiveness of the CTBTO's on-site inspections not only depends on the willingness of states to comply, but as much on the CTBTO and its auxiliary staff's methods of implementation. Inspectors therefore need both human and technical means to gather relevant information that will assist in making a decision on whether the CTBT has been violated. As far as people are concerned, one of the most important skills at their disposal is that of bargaining (Melamud, 2013: 401–417).

Negotiation is a process of moving from A to B in a situation where parties have common and opposing interests at the same time. The effectiveness of parties will first of all be determined by the balance between the converging and diverging needs of actors involved. If they have a broad overlap of interests, the ensuing process will be rather effective and convenient. In such a case, parties will have to approach the negotiation process as much as possible from a cooperative perspective. Such an approach is expected to be the normal case during inspection if the Inspected State Party (ISP) has nothing to hide. But different situations may arise depending on the ISP's security requirements or the wish to hide non-compliance with the treaty. Competitive behaviour would unnecessarily poison the atmosphere and thereby the process of give and take. If the Zone of Possible Agreement between the parties is small, and their needs are sharply opposed, parties will have to choose a much more dominant initial stand, from where they can try to use the negotiation process to come closer to each other.

Common ground between the parties in situations where CTBT violation is suspected will be small by definition. It will also be quite artificial. The principal, and perhaps the only, common interest that the ISP and the Inspection Team (IT) will have is the need

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This section on 'Bilateral Practice' is based on Meerts and Melamud (2014).

(or will) to finish the inspection as fast as possible and get the IT out of the ISP's territory. There might not be any overlap of interests at all. Common ground, then, will merely be the fact that countries will be obliged to comply with the CTBT. In other words, what binds them together is a legal framework, not a material need, although one might add to this line of reasoning that compliance is in the interest of parties involved with an eye to the future. All states that are parties to the treaty have a need to be protected against a surprise nuclear attack by any other side and they therefore see a need to stick to the agreements made in the framework of the CTBT. Nevertheless, there are aspects of a so-called 'prisoner's dilemma' involved. While parties might have a long-term interest in compliance, they could have a short-term need to compete. Negotiations in the context of the CTBT are anyway by definition of a distributive nature, and hardly of an integrative one. Win–lose elements are dominant; the win–win axis will be quite weak and will have to be strengthened through the bargaining process itself.

As well as the problem of opposing interests, a second factor in table-top simulated bargaining is power imbalances. We can distinguish two kinds of power imbalances: structural; and situational. Some countries have many more power resources than others and it might be much more difficult to force great powers to comply than small ones. Smaller powers are so dependent on the bigger powers that, because of the fear of side-punishments, they might give in to fair on-site inspections. If these minor powers create too many problems, however, and if the major powers see on-site inspections (OSI) in these countries as a priority, non-CTBT issues can be used to force a lenient attitude towards OSI. This means, however, that pressure would be more or less absent if the suspected state party is a major world power, for just as the UN Security Council can condemn countries' actions, this is difficult if it concerns one of its own permanent members. However, even small states have a lot of situational powers in cases of on-site inspection. After all, they control the situation on the ground and have ample room for manipulation, which is partly allowed by the treaty itself. The treaty is, of course, a compromise in itself and has some in-built constructive ambiguity, which necessitates reaching an agreement on the ground through negotiation between the IT and the ISP.

The third factor complicating OSI bargaining is the nature of the parties involved. This occurs already during the bargaining stage in the Executive Council, which is the official body to approve an inspection, and relates to the state requesting the inspection and the state that it seeks to inspect. What is their state structure, and which societal, political and bureaucratic culture is dominant? Does the state party have internal problems, for example with minorities that are a majority in the country demanding inspection? Or does the inspected party act as a kin-state for a minority in the country requesting the inspection in order to control its neighbour on illegal testing? Regimes do matter. It will be more difficult to inspect an unwilling authoritarian state than a democratic state. The means to apply pressure on a dictatorial state are far less than in cases where public opinion and the parliament of the state party can be pressurized. On the other hand, it will take more time for a democratic country to decide on its politics concerning an OSI request than for a democratic state structure, especially if minority rights in the inspected region will have to be taken into account. Another point here is the question of (con)federalism or centralism. The state structure of the democratic state will also have an impact, and

culture of course. In societies where avoiding uncertainty is an issue, the mere demand of on-site inspections can be perceived as an offence and loss of face.

This issue of OSI bargaining very much concerns the people on the ground, both for the inspected party and within the IT. Some cultures are much more open than others, and this will make a substantial difference for the IT. But the IT is multi-party as well, being a multinational/multicultural team, whereas the ISP team is of a uniform structure and approach, which may contribute to power of the ISP team over the IT. Different people from different societal and professional cultures will have to work together and so far this has been one of the main problems for on-site inspections. The inspection is thus very much a two-level game and it might well be that internal coordination of the IT will pose more problems than cooperation with the host country that is the ISP. Perception determines reality and different views might create both synergy and miscommunication. Moreover, conditions on the ground might be very tough and will therefore put a lot of pressure on the IT. Tensions could arise, blocking effective negotiation and therefore efficient inspection. Inspections are not only haunted by geographic and weather conditions, but because of the conditions established by the CTBT, time and staff are limited. As a consequence, inspectors will have to deal with a lot of stressors and cultural divergences tend to become a major problem in stressed situations.

A fourth factor enhancing the problems of effective negotiation in an OSI context is the nature of the equipment to be used. This material aspect is of great importance. Without the instruments necessary for OSI, inspectors cannot do their work and will fail to collect the relevant data that may help in finding out whether there has been compliance with the CTBT. The instruments used are of a highly sensitive character and the ISP might oppose importing these machines for the inspection based on diverse reasons, reservations and national interpretations of the treaty provisions. Moreover, a logistical nightmare might arise if the infrastructure of the ISP is so weak that safe transportation of vulnerable machinery is made extremely difficult, particularly as the suspected test will probably be in a very rough and remote area. Material aspects also include the inspectors' living conditions, as they are often forced to live under difficult circumstances, which can have a very negative impact on the atmosphere of cooperation within the IT. Moreover, the ISP could try to make conditions as harsh as possible.

The Nature of Negotiation in an OSI Context

Negotiations are generally characterized by four overriding dimensions. Effective negotiators should, in principle, avoid mixing up these dimensions, as this will distort their efficacy. We can compare this to playing simultaneous chess with at least four other players. Someone who plays simultaneous chess should not mix up the situation on one board with that of the others, unless this will give him certain advantages – there are always exceptions proving the rule. The four strata are: procedures (rules and regulations); processes (flow and direction); the party (including people); and the product (outcome and substance). The strata in turn are delimited by six boundaries: geographic borders; systems; needs; resources; regulators; and time.

OSI negotiations are basically of a bilateral character, although there are multilateral aspects involved. The IT and its host will have to deal with each other on the ground.

The distance between their needs and positions will therefore impact on the negotiation itself. It seems self-evident that the two parties will have much more problem in reaching agreements if their aims are polarized, or if they are involved in a distributive bilateral negotiation, while it will be much easier if their needs and aims converge and negotiations take place in an integrative environment. We might postulate that an ISP that has tested a nuclear device will negotiate in a much more competitive way, while a country that did not test such as device will be quite cooperative. This does not need to be true, however, as an 'innocent' state might still have to hide other issues – or is offended by the call for inspection – and will therefore be as combative as a 'guilty' state party.

In OSI negotiations, procedures are of utmost importance. Some of these procedures have been determined by the state parties that formulated the CTBT, but many of them are still undetermined. Post-agreement negotiations between state parties on an operational manual are still incomplete. Even if these negotiations were finalized, they cannot possibly foresee all of the practical problems that may arise during actual inspection. This implies that parties on the ground will have to agree to certain procedures that have not been foreseen. This might not only lead to practical negotiation problems about procedures between the IT and the ISP, but could also raise issues between the inspectors themselves and between the officials of the inspected states. As all of them are accountable to their superiors and as these superiors are mandated by their leaders, they have to operate in a complex multi-level, multi-actor, multi-power and multi-political context. In that situation, they have to set priorities. One such priority is to have agreement on workable conditions, thus implying that parties will have to agree on certain procedures that state parties did not – yet – agree on or simply did not think about. In other words, many rules and regulations will have to be invented on the spot. Inspectors are thus working in a less regulated context than we would expect. On the one hand, this creates uncertainty and risk. On the other hand, it creates opportunities to solve problems without external mingling. It is clear that the absence of solid procedural agreements will greatly hamper effective OSI, but a procedural bureaucratic overload would have the same negative impact on effectiveness. We could conclude that procedures have to be set, but should be flexible at the same time.

Processes within the procedural context will be highly vulnerable to distortions if the distance between the parties is very wide. In other words, a distributive bilateral negotiation will be much more difficult to handle than an integrative one. Win–lose trends in OSI negotiation are a threat to the mission's success, and win–win outcomes cannot easily be reached. As already noted, the character of OSI tends to foster competitive behaviour, even if the ISP did not break the rules. Loss of face is an issue here, as well as national interests, as things might be found that the country does not want to show to the outside world. This can even be something as simple as the inadequacy of the host country's bureaucrats to deal with the inspection team, or the living conditions of the nation's population.

A process that is hampered by a small zone of possible agreement between the parties, or perhaps even the lack of such a zone, will demand excellent negotiation skills on both sides of the line. The need for compromise and compensation is evident. Creative negotiators can try to bridge the gap by exploring alternative options and acceptable half-way solutions. They might even have to forge package deals if trade-offs are the only way

to create an artificial zone of overlap. Without these aqueducts, the water will not flow and the process will go nowhere.

To complicate matters, several processes might develop at the same time. The multilateral context of this basically bilateral process will generate problems, but also options. It adds to the complexity of the negotiation process, where actors are striving for practical solutions. The slow flow of the negotiation process might frustrate them and have an impact on the climate of the negotiation. Processes therefore have to be taken seriously, as they are the means that we have to materialize what we want. Too much focus on the end-game and not enough feeling for the process itself might be a source of ineffectiveness and failure.

Inspectors are not diplomats. Inspectors are professionals who want a technical job to be done. But in cases of obstructed negotiation processes, the skills of diplomats are needed. Diplomats, however, are found in headquarters, not in the field. Irritations between the negotiators on the ground might spoil the effectiveness of the negotiation process and create tensions between the parties and within the parties. Leadership is then needed, but leaders are – in these situations – chosen because of their professional know-how or their country of origin. Inspectors are also selected because of this. This does not necessarily turn them into people who can deal with the emotions involved in polarized negotiation processes. They are there to do something, not to talk endlessly and fruitlessly. Cultural differences become involved. People will have to struggle with a host-country culture that is different from their own, but also with intercultural problems within their inspection team. The host country has an advantage here, as their receiving team will normally be culturally homogeneous, not only on societal culture, but also on bureaucratic culture. Yet there is a positive side to the nature of the inspectors' profession: technicians tend to understand each other. Professional culture often bridges the societal–cultural divide. Inspectors are part of teams who are steered by different parties with different interests, perceptions, intentions, structures and power, but these parties collide. There is also a moderating factor here. Parties might want to obstruct the process and have a short-term interest in this. However, in the long term they probably have an interest in the compliance of their partner states, otherwise they would not have signed and/or ratified the CTBT. We have the short-term/long-term dichotomy here, meaning that OSI negotiations might be bedevilled by prisoner's dilemma – or even 'chicken game' – features. We might conclude here that it would be wise to have some people in the inspection teams who are versed in negotiation, as diplomats are, although their endless talk could also be an obstacle to further progress.

Product, then, is an outcome of the inspection and of the processes of entry and post-entry negotiation. After all, we are negotiating about substance and about issues, as we are aiming at certain results and solutions. Countries do not want to allow nuclear testing because of the threat to peace, security and stability (as well as health risks) in the region, and in the globalized world. In essence, there are three possible outcomes. The first is when the negotiations have been successful but no test has been found. As was noted earlier, this does not necessarily mean that a nuclear test has not been done. The team might simply not have found it, perhaps a question of its own (lack of) effectiveness. The second outcome is when the negotiations could have been partially successful: some things could be negotiated; some not. An imperfect outcome of the negotiation process

will probably have a negative impact on the inspectors' effectiveness in finding what they are looking for. This is certainly true for the third possible outcome of failed negotiations. It is therefore absolutely vital to avoid complete failure of the OSI bargaining process, as this will result in the failure of the whole mission.

This point highlights the importance of successful OSI negotiations and therefore the importance of training inspectors for negotiation, as undertaken in regular seminars on negotiation techniques and table-top exercises in training for effective searches, in combination with negotiation strategy and tactics. We can also look at product from a different perspective. Table-top training is a product in itself. The fact that exercises take place anyway and that CTBTO staff are active in this field helps to create a CTBTO product, which in itself might foster efforts to create a *de facto* CTBTO reality. By taking action, the still non-formal organization gets a face and a place in the world of international organizations. We might therefore summarize by saying that a successful outcome of OSI negotiations is a prerequisite for a successful field mission.

Negotiations, and therefore OSI bargaining, are limited by several restrictive factors. Getting into the to-be-inspected state is the first factor. The geographic border issue is thus – after preparation logistics – the first step in the OSI negotiation processes. The state's sovereignty is the first problem to be encountered. The tension between competition and cooperation in international relations very much comes to the fore in this first stage of the negotiation process. It is a question of control, whereby the host country can dominate the 'guests' that they will have to receive. On a positive note, the geographic border is a clear first benchmark, helping the inspectors to focus and therefore to deal with issues that might later be an obstacle if not confronted head-on at the very beginning. Refusal to allow the inspectors into the country will probably create international upheaval and can therefore be used by the inspection team as a motor to mobilize powerful CTBT state parties, which might then pressure the to-be-inspected country to comply. On a negative note, a row over the border question might reveal dissent among the CTBT powers and could fortify the position of an unwilling host. It might show to the world the second hurdle in trans-boundary bargaining: the weakness of the international system, both concerning states and organizations. However, it could also reveal flaws in the host country's behaviour, resulting in the host country believing that it will have to put up a smokescreen and try to sabotage the inspection team's entry in order to hide dirty policies within its own territory that are not necessarily related to the nuclear issue. It thus seems advisable to prioritize the entry negotiations, while keeping lines of communication to the home front intact in order to prevent the inspection from falling apart under international tensions.

On interests and needs as a problem in negotiation, we should note that a lack of interest by the international community will be a serious hurdle in OSI bargaining. If this problem cannot be overcome by political mobilization by the requesting state, the whole mission will be doomed. Efforts made in the preparatory diplomatic phase are therefore of the utmost importance. It is up to the diplomats, perhaps with some pressure from the OSI professionals, to prepare the ground for successful OSI negotiations. These interactions will be partly bilateral, but probably predominantly multilateral. The more need exists to take action, the better it is for the OSI team, as pressure on the potential host country will mount. On the other hand, if the to-be-inspected party also has a strong interest in keeping

the OSI at bay, the whole process of negotiation will become a nightmare. Here, a weak need to stop the mission is desirable, while a weak push from the international community could result in no inspection at all. The international community's resources play a major factor if an OSI mission is to be implemented. How much power does the international community have over the potential host country? And how powerful is the host? It is clearly much easier to deal with weak states than with strong, so power differences are an important issue, as are the resources that the OSI team has at its disposal: good equipment; good expertise; good people; and good support, etc. One might conclude that needs and resources construct the frame in which the OSI team will have to operate, but if the context is not favourable, the hurdles of border and system cannot be overcome either.

Finally, there are the limitations of incomplete and insufficient rules and regulations, as well as shortage of time. International law is the outcome of international political and diplomatic negotiation processes. Depending on the states' needs, the international community can or cannot lean on a strong system of international agreements. Power comes into play again here. Strong states might have less need for a coherent international multilateral framework than weaker states. This could be a serious problem for the inspection team, as already noted, but it also gives the IT room for manoeuvre, as it can avoid becoming a puppet on a string. Time is a problem by definition. In OSI situations, there is always a lack of time. This runs counter to one of the important lessons of negotiation theory and practice: enough time is of the essence in having an effective negotiation process in order to explore options, forge workable relationships and create an atmosphere of joint problem-solving. There does not appear to be a way to solve this time problem, apart from being well prepared in cases of a suspected nuclear test. Yet being well prepared is difficult as long as the international community as a whole is unwilling to see the CTBT process as a political and security priority and to pay the price for this. On a more positive note, limited time available could also pre-empt efforts to block the OSI mission from starting to do its job. Diplomacy has a tendency to avoid risk, so it might be good to surprise the diplomats and politicians with quick action, as OSI teams will have to speed up in cases of suspected nuclear testing. We may therefore conclude that the absence of strong regulations and ample time is a problem indeed, but can equally be a positive incentive in order to conduct a successful OSI negotiation process.

Training for On-site Inspection Negotiations

Training negotiation skills is best done by interactive means. Inspectors are nominated, selected and trained based primarily on their technical know-how; this usually does not include negotiations' experience. To this end, the CTBTO has developed a range of so-called 'table-top exercises' as a special form of role-play to train inspectors in entry, field and exit negotiation.

Lecturing is of little help in enhancing insights into negotiation processes. Some lectures will have to be given to introduce the field of negotiation theory and practice, the issues and cases to be dealt with, as well as to cover the debriefing of the exercises. The trainer will have to confront both theory and practice; they go hand in hand. Without any theoretical framework, the exercises will lose their significance, and there is currently quite a lot of literature on negotiation. However, these introductions and debriefings can only

be effective if they are undertaken in an interactive way. This is all the more true for the sessions assessing events during the exercises. Through interaction, people will – when in the field – remember what they learnt in class. Lectures often go in one ear and out the other, but experience will be accumulated in the brain and the body. Participants will have to learn about themselves, their own reactions, negotiation skills, style, character and culture. The saying goes that it is more important – and more difficult – to understand your own culture than the culture of others.

This section will look first at theory and research, and will then focus on training methodologies and structure, exercises and simulations, and expectations: what can we expect from training OSI inspectors in negotiation procedures, processes, parties and products?

Theory on negotiation processes poses a few problems for the kind of negotiations with which we are dealing in CTBT OSI. There is a lot of theory on bilateral bargaining, but this is very much focused on private-sector issues. Bargaining between and among states, and moreover in a highly technical and politically sensitive environment, has not been studied widely. Moreover, this kind of research – if it has been done – fits very much in the Anglo-Saxon line of thinking, which could be difficult for inspectors from China, Latin America, Africa or Southern Asia to appreciate. Additionally, we are confronted with the problem of the so-called 'iron circles' – that is, researchers and theoreticians tend to ignore training as an area in which they might test their thinking, while the gap between researchers and practitioners has not effectively been bridged so far. Therefore, in preparing for table-top exercises and the follow-up field missions, the exercise constructors have to draw on their own experiences, expertise and common sense. They have neither many theoretical tools at their proposal, nor much research to underpin their simulations and games. Nevertheless, we can learn something from role-play practices and teaching methodologies.

A table-top exercise (TTE) is essentially a role-play in a geographical and technological context. It is clear that this kind of training could profit from further developments in serious gaming. Computer games for individual training could contribute to the TTE. At the same time, however, the value of direct human interaction cannot be underestimated, especially because of the cultural impact on OSI negotiations. For role-play and simulation, it is essential to package them in an educational context. A game in itself has little value if it is not thoroughly introduced and debriefed. In principle, an exercise should be easy to understand but complex in its process. Although participants have to be framed in a certain context, they should at the same time be their own master in the sense of having the necessary space to use their own expertise and creativity and to be stimulated to do so. Creating awareness could be seen as the main goal of the TTE, taking into account that the 'students' are usually high-level experts who might tend to overlook the human factor in these technical – and in the end political – processes. The system used by the staff of the CTBTO, a broad teaching framework encompassing a range of short exercises, has been proven effective on several occasions and under different circumstances.

In order to train inspectors to deal with procedures in an effective way, the first condition is to have good knowledge of them. Here, neither teaching nor training suffices. The participant will have to study the manuals. This presupposes not only a manual upon which the countries agree, but also a manual that is consistent and, above all, transparent.

As a second step, the training team will have to integrate procedural questions into the workshop and the exercises, while remaining aware that they should not dominate too much, as processes, people and product will have to get enough 'air to breathe'. To navigate processes means training the inspectors in the uncertainties and opportunities of negotiation. A few short exercises to prepare them for the TTE will normally be very useful, such as a short exercise on distributive (win–lose), another on integrative (win–win), a third on mixed (prisoner's dilemma), a fourth on multi-party (the 'Pentagame' or 'Hexagame') and a fifth on bilateral negotiations between delegations (two-level game). On 'managing people', some insight into the inspector's own behaviour will have to be trained through a quiz on the question of the 'effective negotiator' (skills), negotiation style by means of self-assessment exercises (subconscious behaviour), non-verbal leaks by pointing them out on video (unconscious signalling), and culture (societal and professional) by means of group and class discussions. As far as 'product' is concerned, this has to covered in debriefing sessions of the TTEs themselves, where specialists point out the degree of closeness to reality of the agreements reached.

Short exercises of a focused nature will thus have to precede the TTE, geared to gaining a better understanding of specific negotiation characteristics on dimensions such as procedure, process, people and product. These short exercises would ideally have to be 'loaded' with content that is relevant to the inspectors, as the aim is ultimately to make inspectors aware of their own strengths and weaknesses. These one- or two-week interactive seminars are very relevant both for recent and experienced inspectors. Indeed, the higher the level of the participants, the higher the level of the seminar. These programmes can only be run successfully by CTBTO experts, preferably staff who work on the issues on a daily basis and have had an opportunity to train themselves by repeatedly organizing workshops and seminars like these, in combination with outsiders who have a good eye for human behaviour and the intricacies of negotiation. For trainers and organizers, a sound intuition for the political environment of CTBT issues is of great additional value in order to avoid political hiccups, which are the greatest threat to a successful training programme.

CTBTO Table-Top Exercises: What Are They About?

As the CTBT OSI regime was studied and exercised after the establishment of the Preparatory Commission for CTBT, it became clear that negotiations are going to be conducted on a daily basis and on different levels between IT and ISP personnel. This led to the understanding that negotiation is yet another, additional, tool for the inspectors to use during an inspection. Since the primary criterion for selecting experts as members of an inspection team is their scientific expertise, it also became clear that they should be trained in the use of negotiation techniques.

Unlike other organizations that have an ongoing routine inspections' regime including an in-house inspectorate that can be called in for training any time, the CTBT inspection regime does not include such mechanisms. There is thus a need to study and experience the negotiation environment and strategy of the inspection team through exercises (like other inspection parameters). The CTBTO's Provisional Technical Secretariat (PTS) has conducted such exercises and training through the years as table-top exercises conducted

in the office or a field simulation of the inspection process. Integrative Field Exercise IFE08 was the first major OSI exercise during which negotiations between the IT and the ISP were conducted under an almost realistic scenario. The issue of OSI negotiations was studied previously through a scenario-based table-top exercise that was planned to reveal specific negotiation road-blocks that may occur during an OSI.

The difference between TTE and diplomatic role-play (DRP) has to do with the use of maps as a focal point in TTE. TTE comes close to so-called 'geofiction': a simulation exercise in a non-existing geographical framework. The fundamental difference between the two is the reality factor. TTE tries to get as close to reality as possible, but uses a 'fantasy' map in order to avoid political problems. Geofiction does not care too much about reality, as it tries to cater for creativity, not for technical experiments. Nonetheless, technical aspects are most important, as options and alternatives have to be discussed as a possible solution to a stand-off.

In TTEs, the variant of strong opposing views and scarce connecting middle ground is the preferred option, first because it will be close to reality, and second because a test under extremist circumstances will be more useful than a moderate laboratory situation. From the point of view of training, it is also a better opportunity for the trainees to experience and study such cases in a non-field environment in order to avoid other pressures that are part of field life.

A TTE may be conducted over a few days, in which the participants have to study the material provided, 'conduct' simulated activities, view and analyze results, build a good team atmosphere, and write reports and recommendations. Time compression hence needs to be applied to fit inspection days into the exercise time-frame, so each calendar day of the exercise may cover approximately two to three inspection days. This compression poses some practical problems, because administrative activities – such as writing reports – occupies real time that cannot be effectively compressed.

The exercise team members are selected so that the team will mirror the complete IT's composition as much as possible, including the IT's leader and sub-team leaders. The team is provided with a dedicated room containing all of the required facilities, including a network of computers with a station for each sub-team and for the team leadership.

The team conducts its work independently within general time-lines that are determined and controlled by the control team. At the end of each exercise day, a debriefing session is conducted by the control team with all of the participants.

Although the control team is not supposed to interfere with the conduct of the 'inspection' as proposed by the IT, the actual conduct of the exercise is based on a strict timetable with carefully planned injected events, in order to utilize the available time and to accomplish results. Planned time pressure is also imposed on the IT, so that at times it has to end segments of activities within a required time-frame, whether the goals are fully achieved or not. The exercise process is complicated, as the participants have to operate in a compressed time-frame on many occasions. While field activities are not actually conducted, the time for any phase of the inspection is compressed. Time compression is required because of the resources provided for a training activity, although – as already noted – many actions, such as decision-making or report-writing, can hardly be conducted in a reduced time-scale. This creates pressure and requires participants to finish some tasks in an unrealistically short time. For some of the tasks, however, the

allotted time-span can be extended, based on the control team's decision about the importance of the specific inspection stage. The control team supervises the inspection timetable by issuing messages to all participants about the clock and date change to indicate the progress of inspection time.

A scenario-based TTE environment is a safe setting in which the requirements of the field activity can be anticipated and simulated. It is the most effective way, in addition to the actual field exercise, to prepare participants for the OSI process. The scenario of the exercise is aimed at exercising specific or all inspection phases, such as preparation of the initial inspection plan, point-of-entry (POE) procedures, negotiations with the ISP, inspection activities, or report writing.

A main scenario is developed by the control team in two parts: one for the IT; and one for the ISP. The ISP's scenario includes details known only to the ISP, which will influence its conduct and cooperation with the IT. All background official documentation is prepared by the control team and attached to the scenario, including relevant maps. A series of case studies and special tasks are developed to cover all periods and phases of the inspection process to be played during the specific TTE. Special events, such as weather reports, accidents, failures of equipment, etc., and data to represent information collected by the IT are also prepared by the control team and will be injected into the main flow of the TTE at selected occasions.

The daily routine of the exercise, as supervised by the control team, includes presentation of the case-study by the control team to all participants; allocation of time for preparation and study, followed by decision-making and simulated activities; interaction of the IT with the ISP, as required; interaction with the control team; and daily team debriefings.

During all of the case studies, the way of working within the IT is basically the same. During the first preparation round, the IT leadership, supported by its team, tries to identify the main issues/problems of the specific scenario. Possible strategies for negotiations are then discussed, and these strategies are based as much as possible on a 'scientific approach'. During the ongoing negotiations, the IT – as well as the ISP – retires for deliberations whenever it seems necessary. Nominated rapporteurs collect comments during the exercise and summarize them into one IT report. This report is presented and discussed during the final session on the last day of the TTE.

The methods and techniques of the TTEs draw from military experience. Armies conduct such exercises with actual maps and simulated enemy in order to study actual plans for possible future activities without the need to mobilize battalions and regarding areas that are on enemy territory. It is recognized that CTBT OSI activity is in many ways similar to a military manoeuvre, and therefore the idea of using TTEs arose in a natural way. TTEs were also conducted in a bilateral format before the conclusion of the CTBT between the United States and the Soviet Union in order to study modalities and problems with the process.

CTBTO Table-Top Exercises: What Happened and Why?

The first TTE conducted by the CTBTO's PTS occurred in 1999 in order to study the OSI process. More than 40 national experts from ten states that were signatories to the CTBTO participated in this TTE, functioning as either the IT or ISP, and many observers from

other states followed the exercise. The second TTE conducted by the PTS was aimed at studying the functioning of the Operations Support Centre for on-site inspections, with fifteen participants from ten states. These exercises were conducted in the Vienna International Centre.

The third exercise (TTE-3 in 2003) was dedicated to case studies focused on the negotiation processes during an OSI. TTE-3 was based on an overall scenario describing an OSI situation, as triggered by a request from an imaginary state party. The exercise included seven case studies of specific negotiation situations that may occur during an OSI, involving sixteen experts from twelve states, and was hosted by the Russian Federation and conducted in an institute near the town of Snezhinsk in the Urals. The exercise was planned and managed by a control team (CT) that also participated as the ISP team during the exercise. The IT was composed of selected experts nominated by states signatories. Half a day was dedicated for each of the seven case studies, including the role-play and a debriefing session at the end of each case. The balance between the use of OSI technological expertise and negotiation processes under the treaty's provisions was a main objective of the TTE-3. Negotiation and technical skills were exercised and technical solutions were reached by varying negotiation methods. The importance and complementarity of both aspects was highlighted during the exercise. Proficient negotiating was recognized as an important tool that needs appropriate training to support it just as much as other inspection activities.

The special issues of the seven case studies mainly covered problems of access created by limitations imposed by the ISP. The technical details of each case, which were irrelevant to the next case study, were put aside, but the experience and lessons learned about behaviour and the methodology of negotiating access to an ISP were utilized. Together with the evaluators and observers, participants discussed these lessons immediately after each case study.

The conspicuous use of such immediate lessons was evident already after the first case study, which was an example of a strong positional negotiation style based on the decision of the nominated team leader. The negotiation process became confrontational at some points and caused a change in the participants' behaviour into more cooperative conduct for later case studies.

The case included managing access by the ISP to a military training area, especially to the boundaries of a restricted access site (RAS). As time is of the essence for some inspection technologies, especially for seismic measurements, and referring to its rights provided by the CTBT, the IT tried to gain access to at least the boundaries of the RAS earlier than the planned end of the military exercise as declared by the ISP. The ISP's minimum suggestions of two escorted IT members to visit the RAS boundary and the explanation that full access would be granted at a later time were refused by the IT as unsatisfactory. The IT's leadership for this case nominated two members of the IT as legal advisers, who conducted intricate legal discussions on treaty provisions with the ISP. After long, and occasionally very confrontational, negotiations between the IT and the ISP, no agreement was reached; nor was access to the RAS boundaries concluded.

The second case study dealt with over-flight issues. The over-flight, which is a CTBT obligatory activity, introduced the problematic of transparency. Whereas the IT's wish is to view quickly most of the inspection area by sending a visual inspection team on an aircraft, the ISP has its reservations about viewing some areas that are not relevant and

where a major military exercise is being conducted. This was a good example of how integrative negotiations – combined with technical skills, as well as readiness by the IT and the ISP to accept 'out of the box' solutions to overcome limitations exceeding CTBT regulations – can create a 'win–win' situation. The negotiation process was accomplished by breaking up the problem into smaller issues and starting with the easiest problem, before continuing with more complicated problems. At the same time, building mutual confidence showed that this approach gives the best results.

Another case study dealt with a secret construction site that is not related to a possible nuclear explosion site, but the IT cannot clarify this fact without some sort of access being allowed.

Yet another case covered gaining entry to uranium mines that happen to be inside the inspection area as defined by the mandate of the inspection team. These mines belong to a private company, so there is a legal lengthy procedure that the ISP needs to conduct even in cases when it wants to help the inspectors to enter the mine for inspection; for the IT, any delay may look, of course, like an effort by the ISP to hide or cover up illicit activity. This case illustrated that even with the most willing ISP, inspection activities may be restricted because of health and safety concerns, or long legal procedures to allow inspection activities conducted on private property. In a logical continuation of previous case studies, the IT again divided the overall negotiation package into a set of sub-packages, which were negotiated in a logical order or at the time when a specific situation arose. Some unusual technical proposals were also made leading to agreement on modalities for continuing the inspection.

As the exercises proceeded, the participants learned the importance of avoiding confrontational situations and the value of break-out discussions by experts on a specific technical issue, or by the two team leaders on their own, without their full team's participation. The lessons learned from the case studies illustrated that, in order to achieve the best results from an inspection, the IT has to conduct negotiations in a clear, focused, positive and friendly manner in order to enhance cooperation and may shrewdly utilize 'external pressure', for example by reporting to the Director-General at headquarters, when required. The first case study's failure made it clear that the IT should minimize legalistic debates over interpretations of the treaty's text, and recitation of the other party's duties, etc. Discussions that are focused on technical and operational issues are more likely to be resolved to the IT's satisfaction. The overarching lessons learned from TTE-3 illustrate that the IT depends very much on the cooperation of the ISP, because the ISP has ultimate control over what the IT may or may not do.

The CTBTO's next TTE, with 21 participants from 21 states, was conducted in Vienna and was focused on a specific phase of the inspection, namely the transition from the initial to continuation period. This phase demands negotiations that are both internal to the IT and external with the ISP.

A special exercise was conducted as part of the training cycle for the experts due to participate in the major OSI exercise that was conducted in September 2008 (IFE08, as mentioned earlier). This TTE covered the entire inspection process and was preceded by training on soft skills such as negotiations, team-building and decision-making, in which 24 participants from fifteen states and the PTS participated. After a training session on leadership and negotiation aspects, they participated in a four-day TTE that covered the

full inspection process (IC-15, from 14–17 October 2008). The 24 trainees were divided into two inspection teams, which played the same scenario specially designed for this exercise. The ISP role was played by the same experts for the two ITs. Results at each step were compared during a joint daily debriefing. It was interesting to see how the working methods and atmosphere were different in the two teams, based on the team leader's personality and experience, and on the personal composition of each team. Nonetheless, the final results of the TTEs were very similar for the two teams.

TTEs are being used routinely as part of the OSI regime that has been developed by the CTBTO and also as part of different training activities conducted by the organization. The TTE-3 in the Urals included a few cases simulating OSI negotiations, and more TTEs have been conducted since then as part of the development of the CTBT's OSI regime and the CTBTO's training process. A special TTE was also conducted outside of the CTBTO in a very special setting.

In order to embark on a book on CTBT(O) negotiations, the PIN program of the International Institute for Applied Systems Analysis (IIASA) organized a conference in June 2009 in Laxenburg, Austria, to discuss different contributions to the proposed book (Melamud, Meerts and Zartman, 2013). In order to give the participants to the conference a good idea of the CTBTO problematique on the ground, the authors of the particular chapter on OSI (Meerts and Melamud 2013) presented their classic TTE to their colleagues and organized it with them. This was a special moment in the conference, when all of the participants were suddenly drawn into the subject through interaction, and also helped to create an even more cooperative atmosphere.

The conference members were divided into two delegations: one representing the IT; the other the ISP. Instructions were given to both the teams, as well as to the individual members of the delegations. Both parties had a team leader plus a number of 'experts', while the chapter's authors acted as game masters and observers. After 45 minutes of preparations (or rather, internal negotiations), in which heated internal debates took place, notably in the IT, external negotiations lasted for another 45 minutes, followed by 45 minutes debriefing and discussions. In the middle part – the actual negotiation process – the two teams of twelve people each declared their positions and demands, and exchanged arguments and exhibits. This bilateral process of negotiation could be characterized as quite distributive, like haggling at the marketplace, although using diplomatic terminology.

It was a polarized and tense exchange of views, which could even be described as emotional: an IT that was short of time; and an ISP buying time. The heads of delegation were chosen by the game masters in view of their experience and knowledge. It was expected that both would have enough of a 'helicopter view' to produce a realistic and interesting process, and so they did. Ambassador Jaap Ramaker from the Netherlands, who had been the last chair of the CTBT negotiations in Geneva from 1993–1996, headed the ISP team, and Rebecca Johnson of the United Kingdom, Director of the Acronym Institute for Disarmament Diplomacy, opposed him as head of delegation of the CTBTO's IT – two different temperaments with equal subject knowledge and negotiation skills. A very intriguing – and probably extremely realistic – process unfolded, which was a learning experience for the participants, observers and the game masters.

Although the teams were asked to avoid procedural discussions and to focus on the subject matter as much as possible, more than half of the negotiation time was lost because of a prolonged procedural struggle. A 'fight' over the explanation and interpretation of things that were or were not allowed during the upcoming inspection period dominated the first half of the negotiation and bedevilled the second half. This was not coincidental; everybody recognized it as a strategy used by the ISP, and the flow of the bargaining process clearly showed that it was extremely difficult for the IT to break through the ISP's defences. The rules and regulations of the CTBTO and its Manual – which is still under consideration in reality – clearly give the high ground to the state to be inspected. It is thus quite easy for the ISP to use procedural issues to postpone discussions on content.

This avoidance strategy provoked escalation, which did not really foster an integrative bargaining process. While the ISP had a pulling strategy from the start, the IT had – because of its time problem – no choice but to implement a pushing approach. In this situation, it was more difficult for the 'offensive' party to stay balanced than for the 'defensive' party. Positional bargaining characterized the process, although some useful integrative aspects were inserted into the second half of the interaction by a group of experts of both parties, which had reached agreement on a few important issues during their break-out session. Being experts, so not being too bothered by the political process enfolding between the two teams, it was not too difficult to bridge some rifts. Obviously, the back-channel negotiations did not suffer from the loss-of-face problems with which the delegations in the 'plenary' session noted above were confronted. However, these positive results forged by the expert group could not (yet) turn the negotiation process into a problem-solving process. Slowly but surely, the issue-specific power of the IT shifted to the ISP, with no substantial results at the end of the bargaining process.

The lesson from this section is therefore that the CTBTO's rules and regulations do not – at least not in the context of this TTE – allow for enough space for the inspection team to have a successful negotiation on on-site inspection with the inspected state party.

MULTILATERAL LESSONS FOR PRACTICE

Post-agreement negotiation was extensively dealt with in the book *Getting it Done*, edited by Bertram Spector and William Zartman (Spector and Zartman, 2003), which provides us with interesting lessons for theory and practice, foremost on stability. With this book in mind, a simulation was created to test the impact of process, stages and stakeholders, as three of the five stability factors mentioned in the book (Spector, 2003: 272–292). The occasion for this simulation was the tenth anniversary of the creation of the OPCW, the Organization for the Prohibition of Chemical Weapons (Krutzsch and Trapp, 1999; Yepes-Enríquez and Tabassi, 2002; Kenyon and Feakes, 2007). The Nobel Peace Prize 2013 was awarded to the OPCW for its work on the monitoring and destruction

This section on 'Multilateral Lessons' is based on Meerts (2007), with the support of Wilbur Perlot.

of chemical weapons. Its role in the Syrian crisis can be seen as a catalyst for this decision by the Norwegian Nobel Committee. At this anniversary conference, 70 chemical weapons experts – participants in the jubilee academic conference, whether diplomats or scientists – played a tailor-made, future-oriented, negotiation exercise to raise awareness about the impact of multilateral negotiation processes. In addition, the game served to speculate on likely outcomes of such processes in the coming five years on the basis of carefully designed realistic scenarios.

The game, like reality, reflected the struggle among nations in defence of their national interests, striving to create the common good of the collective interest as they go along. The exercise functioned as a vehicle to deal with global political complexity on a security issue of utmost concern to the world as a whole. Participants, diplomats and academic experts in the field bargained in five parallel workshops, where they represented six OPCW member states, one from each continent: the United States of America; Brazil; South Africa; China; Russia; and France. These countries were selected on the basis of their regional distribution and their relevance to the OPCW. They can also be perceived as representing the position of other states, which could not participate in the exercise as more than six parties creates unsolvable complexity and thereby destroys the game. The topics to be discussed were seen among experts as relevant to the OPCW in the coming decade. Just as in reality, national and collective interests had to be balanced within the framework of an already existing regime, based on a legal framework.

The negotiations were based on a fact-sheet consisting of twenty contentious sentences of a single diplomatic text. In theory, these were the bracketed parts of a simulated single text. Parentheses were shown, and agreed text was left out. Participants had to decide whether a sentence would be included in the text (see Table 1 below). Each sentence was connected to value points, which indicated the priority of that part of the diplomatic text to the state represented in the table. The scores therefore naturally differ per country, while the texts are identical for all delegations. The game is, of course, an abstraction: first, because there are many other countries with many different opinions; and second, because the positions of countries in certain discussions have to be estimated and this is not necessarily in line with reality. Input by OPCW experts over a six-month period did, however, guarantee that substance came as close to reality as playable.

Substance

The following issues were under discussion:

- Destruction of chemical weapons after 2012: According to the Chemical Weapons Convention (CWC), all chemical weapons declared by the states parties have to be destroyed no later than ten years after the CWC came into force – that is, by 29 April 2007. The deadline can be extended by a maximum of five years, but there are no provisions for any further extension. The OPCW will have to find a solution if, as is likely, chemical weapons' destruction by some states parties will not be completed by 29 April 2012, in the absence of a clear-cut prescription in the CWC. Decisions need to be taken on a possible role for the UN, the setting of a new deadline, permanent inspection of the remaining storage facilities and subsidies for the destruction of chemical weapons by CWC states parties.

- Universality, international cooperation and assistance: Universal adherence is a core principle of the CWC. Experience from an OPCW Action Plan to promote universality has shown that some states face political and technical hurdles (such as enacting legislation and establishing a national authority) before they can pass ratification/accession through their parliament. The CWC also contains mechanisms to attract states to join it, including promises for enhanced international cooperation in such areas as chemical defence or other peaceful uses of chemistry. On the other hand, it makes regulations/restrictions for exports of scheduled chemicals to non-parties. The OPCW planned to decide on trade sanctions regarding exports of Schedule 3 chemicals to non-CWC parties, but it was not agreed upon. Decisions need to be made on sentences dealing with stopping exports of Schedule 3 chemicals to countries that did not ratify the CWC, which should be offered assistance for capacity-building, and states parties should have access to protective equipment and technology, and a High Commissioner for Universality should be appointed.
- Industry: The focus of OPCW inspections has so far been on chemical weapons' destruction (75 per cent of inspection resources). As chemical weapons' destruction progresses, more attention is being paid to industry inspections. The following categorization of chemicals plays an important role: Schedule 1 includes high-risk chemicals with very few legitimate uses. There are restrictions on production, uses and trade, and there is systematic verification; Schedule 2 are medium-risk chemicals, for which there is modest industrial production, with regular on-site inspections; and Schedule 3 are low-risk chemicals, basic industrial products with many applications and large production volumes, for which there are random inspections.
  In addition, chemical plants producing certain organics (so-called 'other chemical production facilities' – OCPFs) are covered under a random inspection scheme, because some of them (perhaps 10 per cent) can be used for the production of scheduled chemicals. The CWC uses a number of concepts for the selection of chemical plant sites for inspection, including unpredictability, risk to the CWC, equitable geographical distribution, and – for OCPFs – also information available to the Technical Secretariat and proposals by states parties (based on principles yet to be agreed upon). Decisions have to be made on the number of inspections, geographical spread of the inspections and possible sanctions against companies that refuse to be inspected. It is also possible to decide that no changes are needed.
- Challenge Inspections: Challenge inspections (CI) are a CWC mechanism to resolve concerns about non-compliance. A CI can be requested by a state party anywhere on the territory of another state party (irrespective of whether the location was declared, undeclared, military, civilian, or secret), at any time, on short notice, and there is no right of refusal. The Executive Council can block a CI, but only if the request is frivolous, abusive, or outside the scope of the CWC. The ISP is under an obligation to provide access to the challenged facility; it can manage access in order to protect secrets that are unrelated to chemical weapons. CIs have not yet been invoked and states parties instead use bilateral mechanisms to clarify non-compliance concerns. Decisions need to be taken on making CIs a regular feature starting this year, on the evidence needed to ask for a CI, and whether or not CIs are a measure of last resort. It can also be decided that CIs will not be mentioned in the final text.

- Organizational Issues: The CWC requires states parties to implement a range of measures in support of CWC implementation (national authority, legislation and regulations, standing arrangements for inspections including two-year multiple-entry visas, and declarations on a range of matters). There have been severe delays by some states parties in implementing these measures. At the same time, some states parties have been slow in reaching out to their industrial, scientific and technical communities to explain the CWC's requirements. Decisions need to be taken on possible sanctions against state parties not granting two-year standing visas for inspectors, publication of a CWC summary, nor publishing codes of conduct. Also in this section, it is possible to conclude that no changes are needed.

Rules of the game

Words and points were fixed, but they could be traded and interpreted. As perceptions were different, based as they were on country instructions and individual assessments, competition and cooperation ensued, and their collision created different negotiated realities. Some sentences were mutually exclusive – for example, how can 'Challenge Inspections must become a regular feature starting this year already' logically speaking go together with 'Challenge Inspections should not be mentioned in our final single text'? Some other sentences could clearly be combined in packages. However, the hottest discussions in the negotiations were on issues where some parties were of the opinion that combinations could be made, while others contended that it was not in their interest to have these trade-offs. As we will see later, this resulted in different outcomes in different groups. All of the delegations representing the same country in different negotiation forums (multiple OPCWs, so to say), sometimes represented by one and sometimes represented by two negotiators, had identical instructions. However, as the people were different in character and skills, and as the chemistry in each sham 'OPCW' varied, these multilateral negotiation processes produced different outcomes.

The value points formed the participants' mandate (see Table 1). Participants could only see their own mandate and not the mandate of the other countries. We can now easily see that for the United States, 'OPCW will appoint a High Commissioner for Universality' is more important than for China, but the actors in the simulation had to find out by using arguments. Mentioning the points, or showing them, was in principle not allowed. The only exception was the chairman, who knew every mandate. This also reflects reality, in which the chair prepares the meeting thoroughly and discusses the different topics with the delegations. Values ranged from 40 points plus to 40 points minus, an indication of the importance of certain sentences. The United States, Russia and China could earn and lose more points than Brazil, South Africa and France, since they have more at stake. Not all of the countries are equal, and the points give a more or less realistic picture of the positions of countries, although of course in an extremely simplistic manner.

Table 1 Total Matrix and Optimal Solution

Optimal solution	USA	Russia	China	South Africa	Brazil	France	OPCW
DESTRUCTION OF CHEMICAL WEAPONS AFTER 2012							
Should be considered by the UN if not completed by 2012	**25**	**20**	**15**	**-5**	**-5**	**20**	**70**
Destruction will still be possible until 2017	**40**	**20**	**-15**	**-5**	**-5**	**10**	**45**
Only with permanent inspection team presence at all remaining chemical weapons storage facilities (CWSFs)	-30	-30	5	20	10	0	-25
CWC states parties will subsidize the destruction of chemical weapons where needed	**15**	**40**	**15**	**-5**	**15**	**10**	**90**
UNIVERSALITY, INTERNATIONAL COOPERATION AND ASSISTANCE							
Countries that did not ratify will not receive schedule-3 chemicals anymore	-30	5	5	-20	0	10	-30
Countries that did not ratify should be offered assistance for capacity-building	**20**	**10**	**10**	**30**	**20**	**15**	**105**
State parties will have full access to chemical weapons' protective equipment and technology	**5**	**15**	**20**	**30**	**20**	**5**	**95**
OPWC will appoint a High Commissioner for Universality	**30**	**10**	**0**	**-10**	**10**	**20**	**60**
INDUSTRY							
The number of on-site inspections of chemical industries will be doubled	30	-10	-15	-25	-10	5	-25
Inspections of chemical industries are to be spread evenly over all member states	20	10	-20	-30	-20	5	-35
Refusal to be inspected will be followed by sanctions against companies	25	-15	-25	-30	-15	0	-60
No changes are needed	**-10**	**10**	**10**	**10**	**5**	**15**	**40**
CHALLENGE INSPECTIONS							
Challenge inspections must become a regular feature starting this year already	10	-25	-30	-40	0	30	-55
Challenge inspections are only allowed if there is enough evidence at hand	**-20**	**5**	**25**	**25**	**15**	**-20**	**30**
Challenge inspections are a last resort only to be applied in extreme cases	**-5**	**15**	**25**	**25**	**15**	**-10**	**65**
Challenge inspections should not be mentioned in our final single text	-30	10	-10	25	0	-40	-45
OPCW ORGANIZATIONAL ISSUES							
Sanctions should be imposed against state parties not granting two-year standing visas for inspectors	10	-10	-30	-40	-10	0	-80
Parties should widely publish a CWC summary in chemical labs and industry	**40**	**20**	**10**	**-5**	**0**	**10**	**75**
Parties should publish model codes of professional conduct to ensure compliance with CWC	**40**	**0**	**5**	**0**	**0**	**15**	**60**
No changes are needed	-30	-10	0	20	20	-25	-25
TOTAL	**180**	**165**	**120**	**90**	**90**	**90**	**735**

As already mentioned, participants had to negotiate the future of the OPCW on the basis of their different instructions. They were free to accept any outcome as long as it was within their mandate, meaning that overall they had to score zero points or more. After all, successful international negotiations can be described as a process in which the sum at the end should be greater than the parts. In other words, by fighting over national interests, the international result is created. The harder the fight, the less likely it becomes that the multilateral interest will be the winner. In the OPCW game, the result for the organization is calculated by the sum of the total of each country at the end of the game. Table 1 shows the optimal solution, the best result for the OPCW, but as we will see later, only one of the five groups playing the game reached this optimal solution. In the optimal solution, a total of eleven decisions are taken (marked in bold in the table above).

Perception determines reality. How participants deal with their own mandate is one thing, but how they perceive the other's mandate is quite another. It is difficult to be satisfied with one's own result if others seem to gain more, and of course the other way around. Concessions are easier to make when the feeling exists that everyone have to make painful choices. Sensitivity for the signals of other players can influence the flow of the game immensely, both positively and negatively. On the one hand, 'winning' becomes easier; on the other hand, the signals might distract from what really matters, one's own outcome and that of the OPCW. It is possible that in the given time of 90 minutes of actual negotiations, no outcome is possible in the game, not because anyone was actually below zero, but because of a feeling of relative deprivation. In the case of the OPCW, every group had an outcome, but the struggle between the different countries was clearly not the same for each group, as we will see later.

Processes and Outcomes

The five groups were negotiating in different spaces, which were parallel and independent from each other. In group II, the chairman asked every country to state their position within the category 'Destruction of Chemical Weapons after 2012'. Starting the round with South Africa, delegations varied little. South Africa and Russia, for example, only mentioned two of the four sentences explicitly. Russia said nothing about 'only with permanent inspection team presence at all remaining chemical weapons storage facilities', which was very important to them, considering the minus 30 in their mandate. The full position of Russia on this sentence did not become clear until the very last moment, allowing the United States to do the work of keeping the sentence out of the declaration.

In later rounds, the participants' openness increased. The cards came out onto the table, and possibilities for consensus became visible. This was further enhanced by an excellent chairman, who in his summaries after every round only focused on positive statements. He closed discussion on certain sentences, avoiding a situation in which all is decided when everything is decided, or an all-or-nothing discussion. Although in theory it is possible for a country to come back on a single decision before the negotiations are closed, in reality this is difficult to do without losing a great amount of respect and prestige.

The atmosphere during the negotiations in group I was constructive. There was no conflict between the United States, China and Russia. This may have been caused by the

fact that the United States seemed distracted, and lacked a clear strategy. Russia and China had the impression that they were doing quite well in the negotiations and strong statements were not necessary. Whether deliberate or not, at the end of the game the Americans had everything perfectly under control. By scoring 180 points, they not only had the second best result of the five USAs, but the group as a whole had reached the optimal solution. The results for the OPCW were at its maximum with 735 points. The results of all the different groups can be seen in Table 2 below.

Table 2 Results of the Different Groups

Group	USA	Russia	China	South Africa	Brazil	France	OPCW	Number of decisions
I	140	145	135	95	95	80	690	**10**
II	180	165	120	90	90	90	735	**11**
III	160	140	110	70	80	100	660	**9**
IV	230	165	85	35	60	100	675	**13**
V	145	130	80	80	70	70	575	**8**

Group I took one decision less than the optimal solution. It could not come to an agreement on 'destruction will still be possible until 2017'. Group III could also not reach consensus on this sentence and also excluded from the text 'challenge inspections are only allowed if there is enough evidence at hand'. Group V took the fewest decisions and got the worst result for the OPCW as a whole. In comparison to the optimal solution, group V could not reach consensus on 'should be considered by the UN if not completed for 2012', 'the OPCW will appoint a High Commissioner for Universality' and 'challenge inspections are only allowed when there is enough evidence at hand'. Finally, group IV took two decisions more than the optimal. It made the eleven decisions, as identified, but also included from the category Industry that 'the number of on-site inspections of chemical industries will be doubled' and 'inspections of chemical industries are to be spread evenly over all member states'. It did this while also concluding 'no changes are necessary' in the same category.

The differences between the groups are striking. The amount of time was the same for each group, as well as preparation time. The groups were similar in composition, showing a balance in diplomats and scientists. There was still, however, a difference of 90 points between the United States in group I and the United States in group IV. The same groups also saw the strongest difference between South Africa (95 and 35 respectively), China (135 and 85 respectively) and Brazil (95 and 60 respectively). From this, it is easy to conclude that the United States was very dominant in group IV. A participant from group IV commented that 'the US was really absorbed in their role and was very strong'. It might also be concluded that South Africa was relatively weak in this group. At some point, the group was even below 0, and only by taking out 'challenge inspections must become a regular feature' did they reach 35 points.

Group IV took thirteen decisions and actually took two decisions that were illogical in the eyes of the makers of the game. This is by no means a bad thing. Many multilateral negotiations end with a declaration that has somewhat contradictory sentences. That this is not a good thing for the OPCW is reflected in the points, which are lower than the optimal solution. What is more interesting is why this happened, since it was not necessary

for participants to get a result above 0. In fact, it pushed China, South Africa and Brazil much lower, Russia remained the same, France was marginally better off, leaving only the United States as the real benefactor and probably also as propagator.

In group V it is remarkable that only eight decisions were taken. Here it seems that South Africa was strong. As the only country opposing a High Commissioner, it was also the only country to profit from the decision, but the group should have exchanged it with the sentence about evidence on challenge inspections. Everybody would then have been better off. That such an exchange was not made, perhaps because of time pressure, shows that decisions are not always rational, or perhaps it is better to call it bounded rationality and rational ignorance (Van der Linde 2005: 244). On the basis of the information to the negotiators, the participants made the most rational decision available to them, just as in reality, people judge on the basis of personality, culture, perceptions and group process whether they can be satisfied by a certain outcome.

The role of the chairman is of great importance. Not surprisingly, the chairman of group II (which had the optimal solution) said that it had been rather pleasant for him. The chairman of group V, meanwhile, said that group V first did the 'easy ones' and then the 'difficult ones', which might explain why the trade-off between sentences was difficult to do.

Comparable Games

In recent years, some more of these number-games have been developed. One authentic one simulated a European Union Council Working Group trying to reach consensus on six issues concerning an external crisis in the Mediterranean (Meerts, 2009d: 656–657 and 661–662). Participants who see six boxes, each of five issues, perceive six possible outcomes: one in each box. Those who think outside the box, however, will find nine to twelve possible decisions. The greater the number of in-between outcomes, the better the individual scores of the countries, as well as the collective score of the European Union. By negotiating individual interests, the countries are deciding upon the collective value of the European Union. In this so-called 'Pentagame', the five delegations drafting a single 'text' were France, Germany, Spain, the United Kingdom and Sweden, with Sweden as the spoiler in a clearly biased situation, as different countries had different stakes and could therefore expect very different individual results – unequal but fair. In other words, an equal outcome would not be the most effective result for the European Union as a whole. As the countries' stakes are different, so should be their rewards. As a six-country modification, this version was used to prepare British and Finnish diplomats and civil servants for the EU rotating Presidencies of their respective countries. Variants were also created in which this problem was dealt with in the context of the United Nations Security Council, with the actors being China, France, the Russian Federation, the United Kingdom and the United States. In the NATO Defence College, a complete make-over was created by having six countries negotiate on a crisis in the fictitious island of Janubia, while simplified versions with fewer actors and fewer issues were also made available.

In order to train Iranian diplomats at the School of International Relations (SIR) of the Iranian Ministry of Foreign Affairs, a variation on the Caspian Sea was initiated, in which the Caspian's five littoral states were haggling on five issues ranging from the legal states

of this sea/lake to energy, pollution, security and shipping. A total of 60 young attachés played the game in six parallel groups, with two people per delegation. One interesting outcome was that those who saw that Iran's interests were met by others' concessions at a later stage of the game created good outcomes for the Islamic Republic of Iran. Those who did not see the trade-offs and were stubborn in serious negotiations at the beginning of the exercise did not score well for their country. Here, the Iranian diplomats playing the Russians, Kazakhs, Azerbaijanis and Turkmen did better than those representing Iran. The lesson was thus that if Iran waits too long before stepping into the Caspian (Khazar Sea) negotiations, the Russians will get their former republics on their side, thereby isolating Iran. This came very close to reality. As a negotiation is to give something in order to get something, concessions will have to be made in order to enhance profits. If no conceding takes place, no rewards can be expected, and a potential win–win negotiation will then turn into a win–lose.

More recently, versions for Kosovo and Afghanistan were developed. These are really zero-sum games, in which reaching consensus is almost impossible. As a way out in the Kosovo game, you could also try to get the United States, the European Union and Russia to reach agreement, and then try to force Serbia and Kosovo into the solution. In the case of the Kosovo game, which was played in Amsterdam by participants from the general public, people became really angry at some of their opponents. Emotions flared up. The contrary happened to a group of experts from the OSCE in Stadtschlaining in Austria. Although Serbs and Kosovars were participants in the course, they dealt with the exercise in a very professional way, looking for the best options on the basis of their estimated national interests. In the Afghanistan version, meanwhile, two women playing the Taliban suddenly stood up from the table because it was prayer time. They asked their brothers from Pakistan to join them. A few minutes later they were negotiating together in a bilateral side-meeting, leaving the other participants flabbergasted and increasingly angry. The EU asked the US, which had just become chairman, to discuss with the Taliban that this was not a proper way to act during negotiations. At least 30 minutes later, with roughly half of the game time left, the atmosphere was ruined, really ruined. The US and the EU on the one hand and the Taliban on the other were actually making covert negative remarks about one another in every other sentence. No agreement was reached in the end. A revised version of the game, which was played as a test by the Senlis Council in Paris and performed in an international conference in Canada a few weeks later, ran much more smoothly and produced realistic outcomes of a possible peaceful process for dealing with Afghanistan's future.

In Conclusion

This chapter dealt with simulated processes as a tool in analyzing diplomatic negotiation processes. Simulations, if well prepared and well implemented, will create a context allowing negotiation processes to be as realistic as possible, thereby allowing negotiation research to get a better understanding of behaviour and process in cases where observing real diplomatic negotiation will not be possible. Diplomats and international civil servants tend to work in secrecy, as this will allow them to reach outcomes unhindered – perhaps – by

their own mandates, their parliament, the media, public opinion, and of course by actors excluded from the negotiation process, such as negotiators for other countries.

This chapter first dealt with the chairperson as an important player in real-life and simulated inter-state negotiation processes. The chairperson has to balance needs, observe different phases in the process, understand and influence the people, and use the procedures in an effective way. If negotiation is about giving something in order to get something, chairing is to navigate somewhere to get somewhere. To what extent the chairperson has to be neutral is an open question, which is perhaps also influenced by cultural perception. In one of the discussions in preparation for the UK rotating Presidency, the participants declared that in their opinion a chairperson had to be fair – whatever that implies – while the trainer, being Dutch, thought of effective chairpersons as being 'neutral'.

Second, this chapter analyzed simulated bilateral negotiation processes that are relevant for controlling – illegal – nuclear tests. The chapter describes and discusses so-called table-top exercises (TTE). The objectives of all these TTEs were twofold: one is training staff through experience in a simulated environment; and the other is study and development of the methodology of conduct of an inspection. The TTEs were therefore planned to include situations that may arise during an inspection, to be tackled by the multinational group of expert participants trying to find how the situation can be solved. Various negotiation styles and techniques should be presented and exercised during a TTE. Special cases developed for training can cover specific issues such as connectedness between factors, human interaction in a multicultural environment, the use of specialized equipment, and the geographical environment.

Lessons were identified to be learned and implemented in the training programme for inspectors. This procedure is especially important for the CTBTO, since its verification regime does not include routine inspections and exercises are the only way to advance understanding of procedures and the training of inspectors. Although other verification regimes have routine inspections through which they may accomplish the two objectives mentioned above, these characteristics of a TTE also make it useful in other international organizations that can use such exercises for the same objectives. This may be true for the OPCW, the International Atomic Energy Agency (IAEA), or the fight against terrorism, etc. Trainees may be confronted with specific situations that are important for their training, in a simulated environment instead of sending them unprepared to inspections. This method can replace a number of lectures that describe such situations.

This experience illustrated clearly that the simulation's control team should not always expect the specific development of a case study. It became obvious that the scenario of case studies leaves enough space for the inspection team to come up with different ways for proceeding than the control team has envisaged. It was accepted that it is good to leave such latitude for the inspection team and not to limit its flexibility. Such a programme requires the control team to be composed of experts in the different OSI technologies, who need to be alert and ready to improvise based on the basic scenario as needed. Using TTEs helps participants to understand the intricacies of negotiations on the ground, while it opens opportunities for research in understanding which scenarios might develop in a given situation, thereby supporting the preparation of actual field negotiations. TTEs deepen the understanding of a negotiation process that has not yet happened in reality,

as the CTBT is not yet operational, nor will it be operational in the short term, while powers such as the United States, China, Iran and Israel refuse to ratify it and while the international climate for ratification is deteriorating. Simulation has to replace reality for the time being.

In the third section, a simulation of multilateral negotiation processes on the control and destruction of chemical weapons tried to draw lessons for future negotiations on these issues. The experiences with the OPCW and other comparable international Hexa- and Pentagames show that people matter, even if they are firmly boxed into a stringent regime in which interests are the dominant factor. Although negotiators were framed in the same context of fixed substance and fixed priorities, their individual differences produced substantially different outcomes. These different results were the consequence of their ability to be creative, to have different perceptions and therefore assessments.

These, in turn, were based on differences in character, style, expertise, assertiveness and perhaps culture. Interpretation of the text made the difference. Apart from individual human drives, there is also some form of chemistry in the group negotiation, as well as the factor of the president's ability to do a good job. The outcomes of the OPCW exercises reflect this impact of the individual negotiator and group dynamics. They show the interrelationship between the number of decisions and the level of the scores. Yet this connection is not perfect: outcomes depend on differences in packaging and some trade-offs will not be as effective as others. The factor of value creation is therefore as important as the number of policy decisions made.

However, is it possible to conclude the most likely outcomes of OPCW negotiations in the coming five years, within the grid of subjects and country positions created by the authors of the 'Hexagame' and choices made by the participants in the five negotiation groups? This has indeed been the case. If we take the subjects that all five groups in the OPCW simulation exercise wanted to integrate into the fictitious negotiated text – that is, the overall consensus –we can conclude that the following decisions can be expected to be taken in reality:

1. CWC state parties will subsidize the destruction of chemical weapons where needed;
2. Countries that did not ratify the CWC should be offered assistance for capacity-building;
3. State parties will have full access to chemical weapons protective equipment and technology;
4. No changes are needed concerning on-site inspections of chemical industries;
5. Challenge inspections will be a last resort, only to be applied in extreme cases;
6. Parties are advised to publish widely a CWC summary in chemical labs and industry;
7. Parties are advised to publish model codes of professional conduct to ensure compliance.

Finally, two more decisions might be expected, although they are less likely to be taken as we have consensus-minus-one between the groups: the UN should become involved if the destruction of chemical weapons was not completed in 2012; and the OPCW will appoint a High Commissioner for Universality. It is less likely, however, that the OPCW will accept destruction of chemical weapons after 2017, and it will implement challenge inspections only in cases where enough evidence for illegal activities is at hand, as only three of the five pretend OPCWs reached consensus on these two issues.

As far as the contribution to stability is concerned, in the sense of process (stages) and stakeholders as factors assuring implementation of the Chemical Weapons Convention, it was found that they indeed worked as a stabilizing factor. The process, as designed, forced parties to acknowledge the questions on the agenda. The stages in this process– exploring, parking and deciding – helped to push things forward. The stakeholders, meanwhile, were forced to address the issues on the table, resulting in a number of decisions for implementation, as described above. However, the process also provided an opportunity for procrastination. The stages could be used to slow down progress by focusing as much as possible on exploration and parking, thus leaving ample time for decision-making. The stakeholders moreover had the means – consensus was the rule – to frustrate the outcomes that they did not like.

Although outcomes were indeed produced, they could not be regarded as being very substantial. The chemical weapons negotiations, as embedded and institutionalized in the OPCW, are indeed highly stabilized by process, stages and stakeholders, but to the extent that they slow down decision-making and tend to freeze it. Stability seems to foster stagnation in this respect. Negotiations take place, but at a pace endangering the effectiveness of the CWC's implementation. In that sense, the OPCW is both an opportunity and an obstacle to banning chemical weapons from the world. Yet the organization at least provides us with the tools to contain the dangers of chemical warfare and terrorism as much as politically possible. The Syrian case has recently shown us the importance of the OPCW in protecting civilians against the use of poisonous weapons. The Syrian crisis that started in 2011 and the Syrian government's compliance with the international treaties highlighted the political relevance of the OPCW and brought it out of the shadows in which it has been hovering for several years.

The exercise, as discussed in this chapter, is yet another instrument in simulating a diplomatic negotiation process and enhancing insight of its flow, helping negotiators to prepare for future negotiations by getting a better understanding of possible scenarios and the way to manage them. As in the case of the CTBT exercise, the simulated negotiation foreshadows reality.

CHAPTER XII

Summary and Conclusions

CHAPTER XII: SUMMARY AND CONCLUSIONS

This book has propagated a *holistic* view on negotiation as a means to understand and reform the subject, thereby strengthening its viability as the main tool of global governance and conflict resolution in the twenty-first century. The treatise thus distinguishes itself from other studies of international/diplomatic negotiation processes, since most are focused on specific issues and problems in international negotiation processes. Furthermore, this book has attempted to explain some international political developments in the past, present and future by analyzing the negotiation processes shaping them. Ultimately, this treatise is very much about the interconnectedness of process and context, in defining the diplomatic negotiation process as the essence of getting things done in world politics and governance.

International negotiations, in the sense of inter-state or diplomatic bargaining, are one of the tools to be used in conflict management – if they can be used at all, because, as we saw in the **first chapter**, a situation should be ripe for negotiation and the negotiation should be ripe for a result. In numerous cases, negotiation cannot be expected to work, and other phenomena such as avoidance (neglect), violence, or the threat of violence (domination) arise. As this book noted, there is also a stalemate that does not lead to solutions, but at least to putting an end to, or avoiding, the use of force, although the threat of force will remain: 'peaceful coexistence'. Furthermore, there is a close interrelationship with other mechanisms, such as adjudication and warfare. These two latter instruments in conflict situations in international relations are both an alternative and a supplement to negotiation processes.

As a supplementary factor to the process of international negotiations, adjudication and warfare can be used to enhance assured outcomes in those negotiation processes. International negotiation has, by definition, a less assured outcome than national negotiations. In national negotiations, a third party can force an outcome, when needed, and this is indeed often required, because a state cannot start negotiations with other states if the internal process does not produce a mandate for that state's negotiators. Transnational negotiations – for example in strong regimes such as the European Union – will produce less assured outcomes than in national negotiations, but more guaranteed results than in international negotiations, such as the WTO, the OSCE, or the Shanghai Cooperation Organization (SCO). In some cases, the use of force as a tool in an ongoing negotiation process can help to push the opponent to the table. Adjudication might have the same effect: villains might feel so anxious about the threat of a penalty by a court, in or outside The Hague, that they feel inclined to negotiate. However, as we have also seen, it can bring them to non-negotiation, as they prefer fighting over peace in case they might become the 'victim' of justice the moment when peace has been implemented.

As an alternative to negotiation, adjudication and warfare can be applied in situations where negotiations are not chosen, or are not seen as a workable tool, or are not desirable to the states involved in the conflict. There must be something to negotiate about, something to negotiate on, and something to be satisfied with. Adjudication can replace negotiations, as can arbitration or mediation, but so can warfare. At the same time, it should be noted that both adjudication and war will, as a rule, be supplemented by negotiation processes: adjudication, because we have to negotiate the (international) laws that judges will or will not apply; and warfare, because we have to negotiate its consequences. Negotiation stands at the beginning and at the end of these phenomena, but it can also be used as a tactical device within adjudication and warfare.

Peace, security and justice can be outcomes, as well as tools, and as well as sources of international negotiation processes. They are sources of negotiation because peace, security and justice cannot be decided in isolation from the context.

The moment that peace, security and justice are in place, negotiations are needed to create the framework for their effective implementation. The very instance when they are established, they need refinement through negotiation or by other means. Post-negotiation is needed in order to clarify perceptions, to decide on details, and to protect the subjects and objects of the negotiation outcomes. Negotiations are furthermore used as tools in unfolding processes of peace, security and justice. Once these are established, bargaining will take place in order to solve tactical issues, to ensure the success of the peace process, the security arrangements to protect it, and the judicial system to ensure it. Last but not least, the negotiation processes are the sources of peace, security and justice, which can be regarded as the outcomes of the processes of international bargaining.

The approaches to this in negotiation literature are quite different, although taken together they provide quite an accurate picture of the essence and evolution of the international or diplomatic negotiation process. Quantitative and qualitative methodologies supplement each other by counting what can be counted and arguing what cannot be quantified. In negotiation literature, two main schools can be indentified: the European – that is, the predominantly qualitative French school from the sixteenth century onwards; and the more or less quantitative American – that is, the US school in the twentieth century. It seems that these two schools are converging in the twenty-first century.

This leaves us with an unbalanced academic community, which hardly ever considers Asian, African and Latin American approaches to negotiation. Scientists working on the question of why an outcome is the result of a specific negotiation process are influenced by their cultural background. The only solution for getting a balanced view will then be to pool many people's perspectives from many parts of the world. Apart from this global broadening, there will have to be a fundamental deepening. Research is limited to indirect observation through interviews, surveys, literature and sometimes through the participation of practitioners in academia. Direct observation is hardly possible as politicians, diplomats and other negotiators will not allow it. This problem is inherent to negotiation research, but this does not mean that it should not be tackled again and again.

The conclusion of the first chapter is thus that negotiation research has to become more participative, inclusive and relevant. It brings to the fore the idea that researchers should participate in real-life negotiation processes, adopting as many practitioners as possible, and that the circle of researchers should be widened by including colleagues from non-

Western cultures. At the same time, more attention should be given to bridging the gap between research and training in order to modernize seminars and simulations, which too often are a repetition of well-known concepts and not enriched by new research findings.

The Nature of Diplomatic Negotiation

The next chapters in this book look into the characteristics of diplomatic negotiation and its development; the relationship between the process and its context; the relationship between the usage of words and weapons; and the relationship between the process and the applied strategies and tactics generating entrapment.

As discussed in the **second chapter**, the importance of good and effective relations between states is increasing. Diplomacy as a profession can no longer handle all this extra work, with the result that diplomats are being outflanked by politicians, fellow civil servants, journalists, businessmen, and even researchers. It has become common to speak of governmental (thus not only diplomatic) and non-governmental negotiations, which try to take on diplomatic allure as 'track-two diplomacy' or even 'multi-track diplomacy'. Diplomats must thus make themselves more competitive to survive. The result is a paradoxical situation. Diplomats have lost their monopoly of diplomacy, but at the same time are needed more urgently than ever. They have to function with greater effectiveness in a more limited area, increasingly acting as specialists and not as people who know everything and can do everything. The diplomats' speciality is, of course, communication, but the question remains in what areas? The constant factor is the necessity to use international negotiation as a means to regulate the increasing interdependency of states. With this in mind, diplomats should be used in negotiations that break new ground, thus leaving the usual inter-state negotiations to their fellow civil servants.

In this way, diplomats can function as specialists in negotiations that do not yet have clear confines. They would then have three tasks. First, they would engage in secret pre-negotiations to explore issues and positions, at a stage before the politicians can reveal their views. This requires resourcefulness, discretion, persistence, objectivity, organizational ability and tact, in addition to knowledge. Their second task is to assist the politicians who are conducting the negotiations. This requires strategic insight, political judgement, objectivity and organizational skills. The third task is that of a trouble-shooter, helping to handle all the problems that arise during the implementation of agreements reached during the negotiations. The diplomat needs to be able to take action, to be pragmatic, and to have patience and strong nerves. It would be best to have diplomatic negotiators who can be used in more specific and non-routine inter-state negotiation areas.

Diplomatic negotiation will increase in importance as a means for states to find peaceful solutions to differences, whereas the role of the diplomat in these negotiations will diminish. The question is whether the term 'diplomatic negotiation' will remain appropriate. For several reasons it will. Within the broad international negotiation areas (in which individuals, groups, organizations, companies, local and regional government, etc., are active over the borders), there is still a need for a distinct term for negotiations between states. It would be possible to use the term 'inter-state negotiations', which

is more specific than 'diplomatic negotiations'. As mentioned above, the diplomat will no longer be the dominant player, but diplomacy – with its rules that regulate activities and communication between sovereign states – remains important in regulating the negotiation processes between countries. The diplomatic guidelines give the limits and norms, the rules and modalities. The term 'diplomatic negotiation' will therefore remain valid. Its form and content will change, but that is hardly surprising in the continuing evolution of diplomacy.

The conclusion of chapter two is thus that the differences in status and mechanics between diplomats and other public-sector negotiators should be diminished in order to create one – more or less homogeneous – workforce in order to facilitate the development of stronger and more effective negotiation processes. All public-sector negotiators working in the arena of external relations would basically become 'diplomats', and as issues become more global they would therefore be more effective in coordinating them and advising their decision- makers as to 'what should be done'.

The **third chapter** discussed the linkage between context and process, stating that the boundaries or limitations of the process have a restraining, but above all a useful, function in diplomatic negotiation processes. These limits or boundaries help to guide the process in the desired directions. Unbounded negotiation processes in a competitive and rather unstructured world – because of sovereignty – will have less assured outcomes and will therefore be less effective. Regimes have therefore been created to channel the flow of negotiations towards closure, as was illustrated in the second part of this treatise.

Another important conclusion of this study is the insight that – looking at the coming decades – regime negotiations can only play an effective role in creating stability and progress in international relations if:

- Problems are negotiated at the appropriate level;
- Problems are negotiated within the appropriate regime;
- Relevant actors will be included;
- Actors deal with regimes within a broader framework of bilateral negotiations;
- Stimuli will have to be used in an effective way.

The last point is important. Sometimes, or perhaps quite often, internal and external drives and changes are not used to create more negotiated regime effectiveness. Yet there are always, of course, reasons for this. Thus, for example, the Cyprus issue – which has haunted the international community over recent decades – could have been resolved by using the external stimulus of EU enlargement. However, the position of one of the member states, in this case Greece, blocked this opportunity, although one can ask the question of whether Greek and Greek-Cypriot long-term interests would not be better served by having stability on Cyprus. Here, short-term considerations might have been an overriding reason for not using the external impetus.

Negotiation is one of the main tools – if not the most important – that enable states and other organizations to create order in today's world. Channelling negotiation processes through regimes will, as a rule, enhance their stability and effectiveness. In order to survive, negotiations need regimes and regimes need negotiations. Yet this will only manage to structure the cooperation between parties if those actors are in balance with themselves

and with their partners and opponents. It is a natural phenomenon to seek to restore imbalances. Negotiation within, between and around regimes can help this to materialize. Negotiations help to create the cradle that they need in order to grow and survive.

Political interests are slow to adapt to their environment. It is therefore feared that states' proactive negotiation policies will not be enough to create an international environment that can cope effectively with the problems ahead of us. Unavoidably, natural and man-made challenges will be required to move states forward in the direction of more need-integration and value creation. This is of course a paradox. Regimes are needed in order to deal with challenges, which are in turn the incentives of regime creation and adaptation. This is how mankind developed and there are no reasons to believe that it will be different in the future. Negotiation is its tool, but it must stand a chance. It must have an opportunity to be used and this can only be the case if disaster and development will go hand in hand in a negotiable way.

The conclusion of chapter three is that context is decisive in understanding what kind of negotiation process is applicable in a given situation, while the creation of context through regime-building greatly helps to add value to negotiation as a device of decision-making and conflict management. Organizations are the bodies that channel negotiation processes in the direction of outcomes. They compensate for insecurity, which is one of the greatest threats to effective negotiation processes. While stabilizing the processes, they might also hamper their flow as a consequence of bureaucracy and concentration of power resources.

Chapter four analyzed the role of entrapment in steering diplomatic negotiation processes in a – most of the time – undesired direction. Entrapment processes are characterized by factors such as choice, uncertainty, investment and repetition. They occur at different levels – for example, the intrapersonal, interpersonal, national and international dimensions. Factors that influence entrapment processes are planning, information, communication and control. On the basis of a case study, chapter five drew four lessons on how to avoid entrapment.

Entrapment is both a danger to watch out for and an opportunity to be seized. As with almost everything in international relations, it has both a darker and a positive side. Using entrapment on oneself is a very interesting phenomenon. People who are afraid of doing something may trigger a process that they know will lead to their own entrapment. They know that they need results in the long run, and they know that immediate decisions are psychologically unacceptable to them. A slice-by-slice 'salami process', however, would be something that they could deal with psychologically. They therefore deliberately force themselves into taking the right decisions by embarking on a process of entrapment.

The same is true of countries. Populations are often unwilling to accept tough measures. Their governments are therefore unwilling to direct their delegations to go in the preferred direction. The delegation leader, however, seeing that a particular course of action is required, but unable to convince his or her superiors of this fact, may very well lead the delegation into entrapment on purpose to let 'fate' decide. The 'salami' character of entrapment in international negotiations is therefore something of a two-edged sword, and can be wielded like that by the effective diplomatic negotiator. Even the EU can thus be used as a self-entrapment strategy: if a government has to do something that is unpopular with its people, it can simply point to 'Brussels' as a way to let itself off the hook.

For the negotiator to avoid entrapment, it is first essential to have a clear mandate connected to transparent and effective flows of information. Second, it is important to have a realistic estimate of the strength and the intentions of the other party. It is therefore vital to develop an encompassing strategy, combined with a clear time-frame. A third component is to check assumptions, including assumptions about the value and the character of the relationship with the other party. The final instrument for avoiding entrapment is to be well connected with your own constituency, especially with those who hold the power.

The conclusion of chapter four is that entrapment processes can undermine and undo rational decisions, as well as the problem that different negotiators might have different rationalities that are often of a more emotional nature than they themselves are aware – in short: negotiation is sometimes a rational process for sometimes irrational reasons. New leaders can end the processes of entrapment by turning them upside down. This has to be done in a step-by-step way and patience is of the essence. 'Disentrapment' is an effective exit strategy, but it will take a lot of time. As entrapment is engagement, it can also have positive effects on conflict management through negotiation, as it might lead to ripeness and thereby to closure.

Chapter five dealt with the interrelationship between warfare and negotiation, between war and words. It postulated that both are tools of conflict management and might thereby be seen as two sides of the same coin. War ends by negotiations, war is often accompanied by negotiations, and in many cases war is the outcome of a failed negotiation process. If wars end with an inclusive peace negotiation – that is, a process in which all warring parties are included – it might foster a relatively peaceful longer-term future (as did the Congress of Vienna in 1814–1815). However, if the peace settlement is exclusive, meaning that interested parties are excluded from the peace talks (as with Paris and Versailles in 1919), the chances of peace holding for more than a short period are slim.

A crisis is a risky situation and risks therefore have to be taken into account. Yet war is risky in situations where control will not be possible. A war will either be lost, or it will linger on in guerrilla warfare. Even if one is victorious and the opponent can be controlled, the damage done to oneself, one's allies and the long-term relationship with opponents could overshadow the fruits of victory. The opponents should not be forgotten here, as the enemy of today could be needed as a friend in the future. Negotiation is risky if it provides the opponent with an opportunity to buy time and prepare for exactly the opposite outcome for which your own party is striving. An offer to negotiate can be seen as a sign of weakness, stiffening the enemy's resolve and creating loss of face in one's own coalition. Negotiations can legitimize the counterpart's position, thereby undermining the credibility of their opponent. Yet overall, the consequences of war are so grave that words are often to be preferred. In the end, the risks of war are greater than those of words, so the best risk management is to use words and wars in a connected way, giving priority to the one that will most diminish risks in the context of the crisis that one faces.

The fact that more violent conflicts reach closure nowadays through negotiation and mediation might have to do with the build-up of regimes between the seventeenth and 21st centuries. While international organizations only came into being in the twentieth century, the attempts to create regimes and to stabilize international situations through

long-term agreements can clearly be seen as time passed. There is obviously a connection between this context and the diminishing of war between states, highlighting again the situational character of diplomatic negotiation processes, yet the ever-rising costs of war through modern technology, both in human suffering and material loss, are also a contributing factor. Another reason for the mounting damage that can be inflicted is the sheer fact that more national and international institutionalization and interdependency also enhances the vulnerability to destruction.

The conclusion of chapter five is thus that negotiation is a more effective instrument of conflict resolution than warfare, and it should therefore be the preferred instrument in conflict situations. Yet in order to use it as a tool, it might first be necessary to change the context by other means, while understanding that under these conditions negotiation might be very unpleasant and difficult. In these circumstances, conflict negotiation can be regarded as war by peaceful means, which often has to call in mediators to bring the parties together and to steer them in the direction of a peaceful outcome. However, mediation and negotiation can also postpone the violence, which might recur in a more disastrous way.

The Conduct of Diplomatic Negotiation

The following five chapters – from chapter six to chapter ten – study cases in five different centuries from five different angles: long-term consequences of peace-settlements, the behaviour of negotiators on different levels of negotiation, the inclusion and exclusion of negotiation parties, the weight of personalities, and the institutional setting.

Chapter six focused on the question of conclusion, meaning the closure of the diplomatic negotiation process and the effect of the agreement on war and peace in the future. It distinguished between backward- and forward-looking outcomes. Backward-looking agreements settle a conflict; forward-looking negotiations might solve it. The negotiation case study used for the seventeenth century was that of the Peace of Westphalia, which put an end *inter alia* to the Thirty Years' War in Germany and the Eighty Years' War in the Netherlands, and constructed a new conception of sovereignty. The Westphalian conference can be seen as the first attempt to negotiate an international regime that enables countries to protect their inter-state negotiation processes, thereby enhancing their effectiveness as an alternative to warfare. The chapter looked at the parties and their positions, the procedures they used and the processes they launched, how the negotiators navigated these processes and the consequences for the future.

This was *de facto* an interconnected process of bilateral negotiations resulting in several treaties, of which the Treaties of Münster and Osnabrück were the most salient. The processes were running in parallel, some were running faster than others, and they were connected through informal meetings between negotiators of the different bilateral consultations. Most bilateral negotiations were mediated and the mediators had quite a decisive influence on the course of the negotiation processes. The question of ripeness is of interest here.

The most important initiator of the process was the Pope, although he might have been expected to be the one who would resist the most, as such a process would mean indirect recognition of the Protestant countries. As negotiation is a question of priorities,

the Pope initiated the talks out of fear that the Ottoman Empire would overrun Christianity, an early example of an external threat being a unifier. Besides, he wanted the Catholic states to stop annihilating each other. In order to deal with his constituency, the Pope declared afterwards that this peace was a peace of the devil, although one had to accept the current factual situation. This is an early example of dealing with the constituency in a two-level game, whereby the home front is more of a problem than the external adversary.

Another interesting phenomenon is that of today's enemy, who might be your friend tomorrow – and conversely, your ally of today could be your problem in the future. Understanding this, the Dutch not only negotiated a peace agreement with their enemy Spain, but also mediated a peace between their friend France and Spain. This was in order to leave the Southern Netherlands in the hands of their former and now weakened enemy, as they were afraid of a strong 'ally' (namely France) on their direct border.

The Peace of Westphalia also created an instrument for the future, a kind of regime in a nascent state, *in statu nascendi.* It gave Catholic France and Protestant Sweden the right to intervene in Germany if civil war broke out again.

The conclusion of chapter six is that negotiating favourable outcomes can best be done in a pragmatic way, only referring and sticking to principles if these are instrumental, whereby it is of the utmost importance to foster positive longer-term consequences of the negotiated agreement: in such a case negotiation can forge a situation that allows for advantageous negotiations in the future. The forward-looking character of the Westphalia Peace Agreements had to do with the ripeness of the conflict after 30 and 80 years of warfare. Westphalia installed regimes, notably a new mode of sovereignty, that stabilized the situation in Europe, thereby creating room for diplomatic negotiation as an instrument of conflict resolution.

Chapter seven dealt with navigating the negotiation process during the peace talks at Utrecht in the eighteenth century. These negotiations were seen as another turning point in the evolution of peace negotiations, as they terminated the first global war. As in the Peace of Westphalia negotiations, another attempt was made to secure future peace through agreements that would allow the countries to settle future conflicts within a more or less agreed framework of norms and values. Like Westphalia, the negotiations were connected in bilateral talks, or, as labelled in chapter six, translateral negotiations. And like in Münster and Osnabrück, the negotiators were members of the nobility, negotiating in French (in Westphalia both Latin and French were used as *lingua franca*). The negotiators had to defend different interests, but they had common values and, again like Westphalia, they possessed a lot of space to negotiate. Their rulers were far away and did not interfere in the *who* and *how* of the negotiation process; they only cared about the *what* and *where.*

An interesting aspect of this negotiation is the pre-negotiation phase, which set the context of the peace talks and actually decided on its outcome before the conference had even started. The major powers, France and Britain (a change of government in Britain appeared to be decisive for the start of pre-conference talks), made a separate pre-negotiation deal, thereby *de facto* excluding their allies from the most decisive part of the process. Unlike the Peace of Westphalia in the seventeenth and the Congress of Vienna in the nineteenth centuries, the majority of the countries were kept outside the core decision-making process, like in Paris in the twentieth century. However, Utrecht was

a pre-emptive strike and the other countries officially were present at the conference and officially did participate in the negotiation processes. Interestingly enough, the Dutch had the chance to conclude a separate peace with the French, but they let it pass. In the end, the Dutch appeared to be the biggest losers of the game.

Chapter seven also compared the Peace of Utrecht with two other peace conferences on Dutch soil, Nijmegen and Ryswick, and focused on the behaviour of the negotiators, comparing it with ideas about effective negotiators nowadays. Two sources were used for this: the perception of a high-ranking Dutch negotiator; and those of a high-standing Dutch trainer of negotiation techniques. In essence, little has changed in the last three centuries. Secrecy and manipulation were more valued than today, while precedence and protocol were extremely important. The main difference from conference diplomacy in the twenty-first century is, of course, the lack of technical means, such as information networks and fast transportation, as well as the lack of regimes and structures. In fact, it was a conference with hardly any multi-party decision-making. This created big problems for efficient and effective decision-making.

The conclusion of chapter seven is thus the importance of the pre-negotiation stage as a determinant of negotiation outcomes before the conference starts, but also the effect of a game-changer, such as a new government because of parliamentarism. The two-level game thus appeared to have an enormous impact: negotiation keeps an eye on the constituencies of the parties. As in the previous and the following chapters, it was noted that the diplomatic negotiators shared a common language, values and norms, while they could work in seclusion, which helped enormously in reaching closure.

Chapter eight was about participation in the negotiation process and the effects of inclusiveness and exclusiveness. The case study was the Congress of Vienna at the beginning of the nineteenth century – the first multilateral peace conference, though not all-inclusive. As a consequence of the Vienna negotiations, the so-called Concert of Europe emerged, a conference system seeking to ensure the stability of Europe. It was made up of all of the major European Powers (including defeated France). The Concert of Europe may be seen as the first international regime.

Managing complexity is the essence of multilateral diplomacy and this complexity was something relatively new to the participating countries. Knowing that they could not effectively negotiate with dozens of parties at the same time, and lacking the procedures and means to handle this, it was decided to deal with the main issues in a 'pentacratic' setting (that is, with five powers). Nevertheless, the Congress of Vienna showed all the signs of chaos and ineffectiveness. Notwithstanding several preparatory conferences, planning was lacking, negotiators distrusted each other, and on several occasions the peace conference threatened to deteriorate into war between the 'allies'.

The tactic of keeping the middle and minor powers away from the table had the consequence that they had to be kept busy with balls, operas, and all kinds of other festivities and services. These recreational – and sometimes procreative – events had the important side-effect that Vienna could be regarded as a huge networking opportunity. Much more than in Münster and Utrecht, networks dominated at the Congress of Vienna. As a consequence, information streams came into being, leading to both misinformation and information-gathering. The Austrians used the opportunity to install a wide network

of spies in almost all of the residences, with Austrian Chancellor Metternich even spying on Austria's own emperor and empress. Negotiation and information went hand-in-hand, and a forerunner of twenty-first century spying networks like the US National Security Agency was born, although one should also not underestimate the role of spies and information-gathering and exchange during previous diplomatic negotiation gatherings.

The method of exclusion and inclusion worked well in the sense that substantial results were obtained, establishing a stronger framework for the future than in the two foregoing conferences that were dealt with in chapters six and seven. This framework of going back to pre-revolutionary times by postulating legitimacy as the central feature for the future can be regarded as the birth of the first viable regime regulating the relationships between the allied countries and their former opponents. The method of exclusiveness thus resulted in inclusiveness as the outcome of the congress, which secured a relatively peaceful nineteenth century.

The conclusion of chapter eight is thus that a well-organized conference is of great value for effective negotiation. For negotiations to be successful it is advisable to have a group of strong countries taking the lead, using middle powers to control the small powers, while the presence of political leaders seemed to be an obstacle to efficiency. Diplomats need structure and space to be effective negotiators. On the negative side, the exclusion of certain constituencies – notably new social and political players such as liberals and nationalists – haunted the history after Vienna and undid many of the results that had been reached by the negotiators. As the outcome frustrated evolution, it became one of the incentives for revolution, and evolution is a more fitting context for diplomatic negotiation than revolution.

Chapter nine, which discusses negotiations in the twentieth century, addressed the issue of political negotiators' reputations and the effect on the diplomatic negotiation process in six case studies, all of which were connected to warlike situations. In the aftermath of the First World War, the first global international regimes in the form of international organizations were established. These inter- and supranational organizations truly helped to protect and stabilize diplomatic negotiation processes, thereby greatly adding value to negotiation as an alternative to warfare. The first case was the Paris Peace Conference in 1919, which concluded with the Treaty of Versailles, thereby putting an end to the First World War. Already with the Congress of Vienna in 1814–1815, political negotiators had been entering the stage, but they were diplomats at the same time, not the ones who took the final decisions (with the exception of Russian Tsar Alexander I). During the twentieth century, however, politicians – as heads of state – were often the decision-makers at the highest level. On the one hand, this restrained the diplomats' freedom to be creative in finding compromise solutions; on the other hand it slowed down negotiations, as the political leaders had few incentives to give in to their equals, particularly as the most important political negotiators were representing democratic states and had to take their constituencies into account. The ever-growing importance of the constituencies created new complexities.

The chapter then analyzed the personalities of the political leaders negotiating before and after the Second World War with the cases of Munich and Yalta. The negotiation behaviour of Chamberlain and Hitler might have been rational in the face of their countries'

interests, but they themselves were under the influence of strong emotional considerations, although they might not always have been aware of it. Churchill, Roosevelt and Stalin were perhaps much less governed by their sentiments, but they all had a reputation to defend, thus influencing their negotiation behaviour to quite a large extent.

This chapter furthermore examined three case studies connected to the Cold War: negotiations between Kennedy and Khrushchev; those between Nixon and Brezhnev and Mao Zedong – including the back-channel talks between Kissinger and Dobrynin and Zhou Enlai, respectively; and finally, the negotiations between Reagan and Gorbachev. It concluded that these leaders' personalities, as well as the personal chemistry between them, had a decisive influence on the course and outcomes of the negotiations. Yet not only were the relationships between the leaders of importance, but a kind of two-level game also came to the fore here. The clashes between the leaders and their mandated chief negotiators had an impact on the processes as well.

The conclusion of chapter nine is that negotiation is not only about interests, but also very much about the character and experiences of the negotiators. In fact, these factors play an even more important role if the negotiator is powerful. The more powerful the negotiator, the more often his or her personality will have an impact on the process and the outcome of the negotiation. The defence of the negotiator's reputation has both an emotional and a rational component, as a negotiator with a positive image will be able to exert more influence on the process, while his or her self-image will sustain the negotiation's effectiveness as well. 'Egotiation', however, the situation in which the actions of the negotiator override the interest of the country, will have a negative impact on the outcome of the negotiation process.

Chapter ten analyzed the relationship between organization and negotiation in the European Union. The EU may be considered the most integrated international/supranational organization to date, the pinnacle of four centuries of attempts at regime construction. Looking at the constellation of the Union, an attempt was made to unravel the intricacies of the internal and external negotiation processes. Although much is known about the Union generally, and a host of literature has been written on its functioning and policies, little is available on the processes of negotiation. This is a paradox that might have to do with the complexity of this intergovernmental and supranational regime, but it could also be the consequence of a problem that was signalled in the first chapter of this study: the very limited possibilities for negotiation researchers to be part and parcel of the EU's negotiation process. Yet, there are opportunities for surveying, while some practitioners are willing to talk and to write. Still, discussing the negotiation issue with academic specialists, it is striking how little is known about what is happening within boardrooms and conference halls as far as processes are concerned.

It is clear that different rules within the different EU structures result in different kinds of intensity in the negotiation process. The status of the forum is also of great importance. At the highest level, that of the European Council, package-dealing is more frequent than at lower levels. Difficult issues are pushed from beneath up to the top echelons, which can oversee the possible trade-offs that cannot be made between lower-level officials. Although all EU member states are included, there is some tendency towards exclusion at the preparatory level. The most powerful member states can indeed dominate, notwithstanding their need to create pacts with the middle and minor countries.

Something of 'Utrecht', 'Vienna' and 'Paris' is thus still present in today's European negotiation processes. The President of the European Council, the High Representative, the Council Secretariat, and last but not least the European Commission help to limit the hegemonic tendencies of the major powers, thereby stabilizing and facilitating the negotiation process.

However, the day-to-day negotiation machinery is the Council of Ministers and its Working Groups, including COREPER, the Parliament as a co-legislator, the European Commission as the initiating, executing and controlling force, as well as the European Court as a guardian of the Union's legislation. Around this construction, there are myriads of networks, IGOs, NGOs, regional and local authorities, and many others, adding to the complexity and perhaps to gridlock. The whole of this body politic is too extensive to allow for much space for formal negotiation processes. Formal negotiation processes are, of course, vital and are a daily reality, but progress is made in the corridors, before and after the meetings, and in informal talks between the different formal and informal layers.

The conclusion of chapter ten is thus that a strong regime enhances the effectiveness of diplomatic negotiation, while too much complexity might lead to gridlock, which can be avoided through informal negotiations. The more formal negotiation arenas abound, the more important informal negotiations will be; the more informal negotiations there are around, the less transparent the EU negotiation process will be. For the moment, the European Union is the last stage in attempts to enhance the effectiveness of diplomatic negotiation through regime-building. As the European Union deepens and stretches out, it has to cope with growing complexity, while it remains in need of more and more effective diplomatic negotiation processes as the life-blood of the Union.

Chapter eleven dealt with three cases about the conduct of diplomatic negotiation processes, not through the ages, but through simulation. As already stated, it is difficult to observe the process of negotiation and the behaviour of the negotiators. Simulation might therefore be part of the solution to gain insight, as actors in the process tend to behave in a natural way, as if they were bargaining in reality. In principle, the negotiation will not be different, but some artificiality cannot be denied. This is probably not because of the 'players', but very much because of the 'game masters' who are setting the scene, which can come very close to reality.

The first case study concerned the chairperson as such. What do we know about the role of chairpersons and what kind of lessons can be drawn concerning their effectiveness? The main conclusion is that chairpersons have to act situationally, as negotiations are situational by nature. Depending on the phase of the process, the chairperson has to guard the procedure and the agenda, direct the negotiators towards a fruitful discussion, help them to select the issues to be decided upon later, facilitate informal discussions and negotiations, act as a mediator or even as an impartial negotiator in the decision-making round, while pushing things towards closure if negotiators have difficulties in reaching outcomes.

The second case study was a so-called 'table-top exercise' to understand negotiations 'on the ground'. In implementing agreements, it is often necessary to conduct post-agreement negotiations on the spot. By putting the negotiators in different situations, their ability either to negotiate entry to where they have to check on implementation, or

to ward off 'intruders' by skilfully using arguments and circumstances without breaking a treaty's rules and regulations, can be tested. While it is absolutely necessary to have negotiators who are experts in the field, it is not good enough to let them deal with the issues at hand without the help of generalists who see the bigger picture. Tunnel vision will make the whole endeavour ineffective.

The third case study was of a 'Pentagame' (a number-game with five parties), in which the overall context was given, but it was then up to the players to optimize or maximize their profits. This exercise brought several professionals together: politicians; diplomats; civil servants; consultants; scientists; and others. As they were not defending their real interests, they could wholeheartedly focus on the negotiation process, which produced interesting moments and outcomes, while they could converse without their usual burden. The exercise also provided insights into future available options, thereby helping negotiators to prepare effectively for the upcoming rounds of post-agreement negotiation processes.

The conclusion of chapter eleven is thus that simulation can be a helpful surrogate in cases when researchers and others cannot be present at real-time negotiation processes, as simulation deepens insights, while it facilitates experiments to enhance the effectiveness of the process and the people. Negotiation is a reality game and can therefore be easily simulated in order to further the understanding of negotiation itself. Simulations will give diplomatic negotiators a chance to practise their skills in a safe laboratory context. Chairpersons who could not ask participants in real negotiations to assess them can now learn from their actions. Specialists who are unaware of the importance of networking in negotiation can now practise it. High-level specialists and ambassadors who have to be careful in exploring future situations with their colleagues will now be able to discuss them. Finally, simulations can be used by researchers to compensate for the problems that they encounter in being kept out of real diplomatic negotiation processes, as noted in the first chapter of this book. In short, simulation exercises provide an accessible and safe space for learning and experimentation.

Cross-Cutting Findings

In addition to the conclusions that are related to the specific chapters, some more general conclusions can be drawn from previous observations cutting through the selected case-studies.

This book sees the process of diplomatic negotiation as the most effective and efficient tool in inter-state and inter-organizational relations. Much evidence was collected to support this proposition. The treatise asked the question of how to further the use and usefulness of diplomatic negotiation in order to limit destructive tendencies in international politics. It presents insights that will hopefully help to evaluate these processes as an instrument in dealing with contradictions among the parties that are shaping world affairs: parties with both individual and common interests sitting around tables that separate and connect them. However, as noted above, those who are not at the table will be on the menu.

Diplomatic negotiation is therefore between cooperation and competition. It is vital for the future to enhance the cooperative element in negotiation and to diminish the

competitive side. However, politics are characterized by strife and competition is not only there to stay, it has the healthy function of avoiding monopolization as well. Looking at diplomatic negotiation as a global system, as a pathway to govern the world and its inhabitants, it seems sensible to strengthen it without suffocation. Striving for balance between context and process through further regime-building, while keeping the arteries of the process as open as possible, might be of help in providing the world with reasonably good state and inter-state governance.

The proposition of this book, that international/diplomatic negotiation can only be a viable alternative for warfare if countries can exercise a certain amount of *control over their internal and external opponents through regime-building*, has been discussed and analyzed throughout this manuscript: first in Part I on Nature; and second in Part II on Conduct. The focal point in the first part was the connection between process and context, the balance between war and words, and the quite recent phenomenon of more violent conflicts being decided through negotiations than through victories. The second part focused on the question of to what extent the cases signalled a more stringent control through rules and regulations, networks and constructions.

'Münster' showed that rulers legitimized foreign intervention in order to keep the peace in the Holy Roman Empire of German nations. 'Utrecht' indicated the duty of the constituents to prevent future wars through unilateral or collective actions. 'Vienna' created a more or less permanent alliance of the greater powers collectively to hold the peace. 'Paris' tried to solve the problem of future threats of war by subduing the collective enemy for as long a time as possible. 'Brussels' managed to do away with internal wars by integrating a growing number of countries in one balanced construction through an international and supranational approach, thereby establishing a negotiation monopoly in the management of internal and external cooperation and competition.

Outside and between these regimes, violence remains a problem. There is no negotiation monopoly because of the relative weakness of global institutions like the United Nations Security Council, although negotiation has become a more important tool in conflict management and resolution over the centuries. On a regional scale, the progress of cooperation – and thereby of negotiation – has been uneven. There has been a growing hope for regional institutions to compensate for the lack of decisiveness on a global scale. For the moment, however, the European Union seems to be an enigma – an exception to the rule that regional organizations are hardly more effective than more encompassing regimes.

States remain the domain of negotiation, although they are enhancing their capacity for international negotiation as an alternative to warfare, because of growing economic interdependency, diplomatic institutionalization and the progress in international public law. The fabric of international cooperation, however, remains vulnerable and dependent on ripeness situations, as international regimes are often still too weak to create negotiated ripeness. Negotiation has become a viable instrument of decision-making, but in crisis situations it is still often more of an auxiliary instrument. The turning point where diplomatic negotiation will be strong enough to make wars redundant is still to be reached and might never come, notwithstanding the growing strength of diplomatic negotiation over the centuries.

As emphasized in this study, diplomatic negotiations start with the actors who initiate the process. *Actors* have three choices: to do nothing; to pull back; or to push forward. In other words, to freeze, to flee, or to fight. These movements are mainly determined by the factors inside and outside the context in which the actors operate. Inside or outside, three main *factors* play a role in the decision of actors to act: interests; values; and power. There are also three main phases in the negotiation *process* itself, as a consequence of these actions and factors: exploration; selection; and decision. These phases are embedded in pre- and post-negotiation processes. As diplomatic negotiation is an instrument in managing international relations in such a way that problems can be solved in peaceful ways, it will have to be effective as a tool in international governance and conflict resolution. By effectiveness, we mean managing actors, factors and processes in such a way that outcomes can be reached at the lowest possible costs. Managing sovereign countries is problematic, unless – as has been stated above – there is a certain measure of *control*. This control can be exerted through over-arching international regimes.

Actors

Since the seventeenth century, the state has developed into an ever-stronger actor in diplomatic – that is, inter-state – negotiation processes. While in the seventeenth century the state was a tool in the hands of dynasties, with the exception of England and the republics, it progressed to become an instrument in the hands of the people, represented by their parliaments. However, in more than half of the world's nations today, the state is a *de facto* tool of oligarchic or authoritarian elites, while some – presidential – dynasties still govern. These internal differences have an impact on the two-level games in the negotiation process.

Public opinion plays a major role in democracies – and therefore parliament, the media, and public and private sectors – in the conduct and decision-making of negotiators. To sell negotiations to their own people is often a major – and unsolvable – problem. Negotiators from semi- and non-democratic countries will have to struggle less with their constituency, as they have more control over them. Control is thus a major element in dealing with internal pressure: the more control over the home front, the more effectively political negotiators and their agents can conduct their negotiation with external parties. This was dealt with in the chapter on negotiation and warfare.

One of the most important findings of this book is that the *creativity of the diplomatic negotiator is in danger*, and thereby his effectiveness. Although the rulers were absolute in the seventeenth, eighteenth and nineteenth centuries, and in some cases also in the twentieth and even now in the twenty-first century, the space for their agents – and thereby for their ability to reach outcomes in a creative and human way – has been shrinking. The ambassadors of the seventeenth and eighteenth century were thus in a way 'Brusselized' already. Nobles with common values using a *lingua franca* that they all understood, in an age when nationalism was not yet a serious issue, had more influence on the outcomes than their rulers, who mainly decided on the formulas, but hardly on the details.

During the nineteenth century, rulers begin to intervene more and more in the day-to-day negotiation processes, while in the twentieth century, politicians started to play a more and more dominant role in the actual negotiation process. This development was facilitated by increasingly effective means of transportation and communication.

Political negotiators can easily jump over the tables around which their agents try to fix the international problems of their countries, and these diplomats and civil servants can be scrutinized and controlled in a much more effective way than in the past. Furthermore, secrecy is an important element in successful negotiation, either direct or back-channel. In foregone ages, secrecy was much easier to uphold than either today or in the future. Bureaucracies and intelligence agencies can now penetrate the table. The media are much more effective than in the past, as democracy demands transparency, and transparency in turn is needed to establish and maintain legitimacy, at least in democratic countries. All this gives rise to a less effective diplomatic negotiation process, thereby weakening negotiation as a tool in the conduct of international relations.

Factors

The assumption that *interests are the dominant driver* in international negotiation processes was borne out by the cases that were analyzed in this study. Thus, situations of diverging and common interests are suitable for negotiation processes. The more diverging the interests, the more competitive the actors will be. Conversely, the more common ground the actors share, the more cooperative behaviour we can expect. Intra-institutional negotiation will often provide a framework and a level playing-field where the clash of interests will be less harsh than in extra-institutional environments. The chances for assured and mutually beneficial outcomes will therefore be enhanced. As well as interests as such, the question of stakes and priorities will modify the weight of the interests.

One example of this can be found in a comparison of the negotiations in Münster, Utrecht, Vienna and Paris, as analyzed in this study. In Münster the parties were so exhausted that this ripeness facilitated much common ground and thereby substantial outcomes, which not only closed the past wars in an effective way, but also gave rise to new forward-looking regimes that are still relevant today. Utrecht, on the contrary, was a deal made by the victors and left many of the negotiating parties unsatisfied: the common ground was quite uncommon. As a consequence, new wars broke out and the conference was not much more than a pause between wars, although the peace agreement did settle issues and does have an effect that lingers on to the present day, albeit in a negative way. Issues remain painful for those that lost, such as Spain – Gibraltar remains a bone of contention. Meanwhile, Vienna showed common ground because of the existence of a common enemy: Napoleon Bonaparte and the French Revolution. The main reason why there was an agreement at all, and an agreement that more or less stabilized Europe, was a new regime that came shortly after Vienna: the Holy Alliance. Subsequently, Paris was the consequence of a victory by the allies, not of ripeness for all the parties. The victors were exhausted and this forged common ground among them, but Germany remained outside the efforts to create commonality between the parties. As a consequence, the excluded party took revenge 20 years later, something that had been foreseen by negotiators already towards the end of the Paris peace talks.

Values and norms are embedded in culture and culture's impact on negotiation is very diverse, but in general one can distinguish between societies in which negotiation is part of daily life and those where people tend to pay a fixed price. In the first type of society, the exploration phase will take much more time to conclude than in the second. However, in inter-state negotiation, negotiators from the latter type of negotiation culture

are often much more willing to start a negotiation process than those from the first type. This is because of the enormous importance of values and face-saving in the first type. The paradox is that while members of those cultures are more ready to bargain in the marketplace, they are at the same time much more hesitant to give in while operating at the diplomatic level.

Values play a decisive role in international negotiation. Values are often overshadowed by the role of interests, but they can be as meaningful. In Western negotiation research, the emotional dimension has been underestimated for decades. Nevertheless, values are present in both 'Western' and 'Eastern' negotiation arenas. In the West, they take the form of, for example, the defence of human rights principles, the advocacy of good governance, and the promotion of democracy. In the East, it is much more about reputation, pride and honour: face-saving. Negotiating about interests is more open to trading than bargaining about values. Values are non-negotiable (at least in principle) and can thereby be a major obstacle to effective negotiation, especially if they are connected to personal or group identity.

This was the topic of the chapter on reputation and 'egotiation'. This chapter illustrated the importance of 'face', even in Western culture and even with 'rational, purposeful politicians'. The point was made that issues of non-material interest could have very negative consequences for the negotiation processes, as with the cases of Chamberlain–Hitler and Krushchev–Kennedy. The character and posture of the negotiators had a positive effect in the Gorbachev–Reagan relationship. In the Stalin–Roosevelt–Churchill triangle, things were of a more mixed nature, as was also the case with Nixon–Brezhnev–Mao. The role of 'egotiation' was notable in the internal negotiating situations: the rivalry between Nixon and Kissinger; and between Mao and Zhou Enlai. These competitive relationships in a way posed more problems for reaching viable negotiation outcomes than the interactions with the external partners.

This book furthermore found that in diplomatic negotiation, *the role and impact of power differences are probably the most important criteria for distinguishing diplomatic negotiation from other kinds of negotiation processes*. It is, in other words, the political aspect of inter-state negotiation, as politics is about the use and distribution of power resources. Extra-institutional negotiations are more influenced by power differences than intra-institutional processes, and will therefore be much more risky than the latter. In other words, organizational structures around channels of negotiation will temper the impact of power, although power differences will not disappear completely and will materialize in the inclusion or exclusion of actors in the negotiation process.

An example can be found in the real-life case of Pacific Oil in the chapter on entrapment. The organizational setting and the change of context allowed the weaker party to be more successful than the stronger. The case also illustrated the importance of the hierarchical structure within the organizations that are negotiating with each other. Their internal organization and power distribution very much influenced their external power position, as did the relationships inside and outside the organizational context. The case also showed how the contextual factors influenced the direction of the negotiation processes in such a way that their flow influenced the power balance. This flow itself also had a huge impact on power symmetry. The entrapment process robbed the party with most structural power of its alternatives and weakened its position substantially, and, as

noted in the first part of this book, alternatives are an important ingredient of power. The situational power of the weaker party grew at the expense of the structural power of the other party. As a consequence, the weaker party became the stronger, for the moment. If the context changes again, however, the victor has to fear for its survival, as context change will allow its opponent to use the structural power that it still has at its disposal. The shadow of the past will influence the present and the future.

Process

The phases in the process are very much influenced by their institutional and cultural context. The institutional environment has a huge impact on the way in which negotiations will develop. Bilateral and multilateral negotiations in international organizations provide for more security and thereby stability than ad-hoc bargaining. Outcomes will be more assured than in negotiations outside institutions, but the processes are normally quite time-consuming. The exploration phase can be short, as partners often know each other quite well, but the decision-making can be very painful, as actors are aware of the binding and often legal character of their decision. The consequences are enormous. The post-negotiation phase, moreover, is hardly problematic.

The real problem of extra-institutional negotiation often lies in the pre- and post-negotiation phases: how to get the actors around the table; and how to ensure compliance and enforcement. To pressure negotiators to come to the negotiation table remains the main problem. Context change is often needed, but it might only be the disaster that one wishes to avoid which can force parties to start the process. Mediators can be of great value, especially if they can be the source of a peaceful change of context through threats or diplomacy. As a consequence of insecurity and uncertainty, the exploration phase might become very time-consuming, while the selection and decision phases might be realized in a relatively speedy way.

Control

An example of the role of control is the observations made in the chapter on simulated negotiation processes under the heading ‘synergies’, which discussed the problems that the chair will face in controlling negotiators in the meeting. Too much control will undermine the chair’s position, as the participants might revolt. Not enough control will hinder the chair in the task of coming to closure in a meaningful way. The table-top exercises illustrated the problem of control from the perspective of the different situations of the inspection team and the inspected state-party. Both try to gain control over the other party in order to reach their goals of finding something or hiding something. The ‘Pentagame’ at the end of the chapter made clear that the institutional structure of the negotiation process can facilitate both parties to more or less equal control over the situation, thereby fostering predictability and safety for both process and participants.

Control over diplomatic negotiations with other parties is the nucleus of inter-state negotiations, as it determines their outcomes. No control means unassured outcomes. Even if an outcome will be reached, its implementation is insecure. Incentives for using negotiation as a tool in conflict management will thereby be weak. This enhances the chances for warfare as an alternative to a peaceful process of conflict resolution. The difficulty of reaching assured outcomes and implementation was one of the reasons for

strengthening inter-state regimes during the last four centuries. Through these regimes, which culminated in international organizations in the twentieth century and supranational constructions today, sovereign states are managing their relations in such a way that less costly (that is, negotiated) solutions will become a viable instrument in international relations. This opens opportunities for more international governance through negotiation in the future, with a growing importance for negotiation and how it will be conducted. Negotiation will therefore, in this vision, become an increasingly essential part of the conduct of internal and external negotiations.

As a downside, there is the danger of gridlock. While states are in need of increasing control over internal and external negotiation processes, they need more and more bureaucracy to exert control. Bureaucracy and control tend to enhance inflexibility, which in turn hampers the negotiation process and thereby its effectiveness as an instrument. Bureaucratic barriers will slow down the process, as we already see in the European Union. As discussed in the conclusion to the chapter on the European Union, such gridlock can be tempered by expanding the informal arena of EU negotiation. It has been noted before that progress in negotiations is often to be found 'in the corridors'. In that sense, more informal talks will not only guarantee some freedom from institutional obstacles, but will also enhance the chances for successful closure of the negotiation processes. There is the importance of informality in reaching deals: too much formality leads to mechanical processes, while negotiation is not only about procedures, but very much about creativity. Nevertheless, a strong link with the formal side of the process has to remain, as control will otherwise be lost and formalization of the outcomes will not be realized, thus making them redundant.

There are also other trends diminishing the impact of negotiation on desired outcomes. As well as the growing role of the often 'egotiating' politicians, there are multitudes of national and international civil servants, lobbyists and other non-governmental negotiators who are slowly but surely pushing aside the diplomat as an agent in negotiation. This obstructs the process in two ways: the sheer growth of actors creates more complexity; and although complexity might open new options, it also serves to suffocate the processes. More complexity means more formal rules to manage it, and more time to come to closure.

In the conclusions to the second chapter of this book, observations were made about the future role of the diplomat as a diplomatic negotiator in competition with negotiators of other governmental and non-governmental agencies. It was observed that the distinction between diplomatic and non-diplomatic negotiators will probably wither away, foremost in strong regimes like the European Union. This is an interesting paradox: *while the regimes allow for successful diplomatic negotiation processes, they will at the same time diminish the role and the importance of the diplomatic negotiators.*

As a result, miscommunication will also be on the rise because of the erosion of diplomatic culture, as fewer and fewer diplomats are allowed to conduct international negotiation processes. Professional cultures are bridges between societal cultures. It could thus indeed be helpful if negotiators from specialized ministries sit around the table, as they do understand each other, which would allow for a smoother negotiation process, but they will have to be hacked together for a final and balanced overall outcome. With a weakened role for the diplomatic services, whether EU or national, such harmonization will become increasingly difficult.

In sum, there are two trends for the future that will, depending on the situation, work against each other or strengthen each other. On the one hand, there is a growing *institutionalization* of the negotiation process, underpinned by a multitude of negotiators facilitating these processes and thereby enhancing the chances for effective outcomes. This institutionalization will result, on the other hand, in growing *complexity, formality and transparency*, thereby creating *inflexibility* in the negotiation process, which will obstruct it from reaching viable outcomes, as it is further complicated by complexities stemming from *the nationalization of international negotiations and the internationalization of national negotiations.* The processes will be more time-consuming, while in the modern world, timely closure is of the essence.

It is, of course, difficult to predict how much these two trends in diplomatic negotiation will neutralize each other. However, as warfare is so damaging in our globalizing world, there seems to be no realistic alternative to negotiation as a global tool in governance and conflict resolution. Negotiation is an essential component of the fabric of global governance. It is therefore of vital importance to manage the positive and negative trends in the effectiveness of negotiation processes in such a way that the positive trend will maintain the upper hand.

Recommendations

In order to strengthen diplomatic negotiation as an instrument in international relations, a few recommendations might be of value. Diplomats and civil servants should continue to play different roles, whereby the diplomats' role would have the helicopter's view while specializing in certain niches such as conflict management. However, the formal difference between diplomats and other civil servants working internationally should be diminished and – if possible – disappear. It would be helpful to give both roles the same status and – more importantly – to forge a common culture. One of the tools to create such a common international negotiation culture is to provide diplomats and other civil servants with common education. With the teaching of international relations studies – whether political, legal, economical or otherwise – at universities all around the world, using English as the *lingua franca* in both education and negotiation, there seems to be no serious obstacle to the rise of an overarching new diplomatic culture in negotiation.

This trend can be further stimulated through early and mid-career training of international negotiators through diplomatic academies. Since the 1970s, and for Europe since the 1990s, diplomatic academies and schools of foreign service have met to discuss enhanced cooperation. However, notwithstanding several attempts to do better, little progress in cooperation has been made. The crux is the reform of the organization and the programme of these institutions themselves, which can only be done, of course, by their respective governments. Little investment is needed to make this materialize.

The organization of the forums facilitating negotiation processes could be made more efficient. Again, this would not demand serious investments in money and people, but there are serious constraints of a political nature. As long as countries feel that it is in their interests to cooperate, but that such cooperation diminishes their options to opt out, thereby reducing defence of their vital national interests, such reorganization and streamlining will remain a Utopia, at least as far as top-level negotiations like in the

United Nations Security Council are concerned. It is questionable, however, as to what extent these top institutions really count.

Perhaps the underlying negotiation platforms are of much more importance, as they prepare for the highest level strata. International negotiations will seldom start at the top. Day-to-day bargaining processes by low-ranking and middle-ranking negotiators will prepare the basis for negotiations at the higher bureaucratic and political levels. Without this preparatory work, the bureaucratic and political leaders would not be able to conclude their treaties. While it is difficult to reform the structures – and even more so the negotiation culture – at the highest levels, it seems to be possible at the working levels.

Finally, the issue of internal negotiation processes should not be overlooked, as internal processes are often more important and more difficult to manage than external. Just as international politics is the reflection of national politics, it might be said that international negotiation is the projection of the national negotiation processes on regional and world politics. In order to enhance the effectiveness of negotiation as an instrument in international politics, internal reforms are needed. On the one hand, this is easier than with external reforms, as there is more control over internal processes; on the other hand, however, these reforms will immediately affect the positions and interests of the bureaucracies and the political systems of a country or an international organization. Enhancing the efficiency of negotiation internally is therefore problematic.

As in the international arena, the bottom–up approach might create more chances for success than a top–down approximation. The problem remains, however, that the decisions to reform the institutions that facilitate the negotiation processes will have to be taken at the top, but they might be influenced in a positive way from the bottom. As crises are often helpful in changing a context, the current shortage of financial means might invoke more streamlining of – and cooperation between – the institutions of the state or international organization. This might in turn help to simplify the negotiation process in order to keep it manageable.

Diplomatic negotiation will remain a country's main instrument, both inside and outside international organizations, for representing its interests and dealing with the problems that it encounters. Diplomatic negotiation will become more important as globalization enhances interdependency and provokes regional and global conflicts. Interdependency is vital for negotiation. Without it, diplomatic negotiation processes could not function.

Government representatives navigate these processes in order to strengthen national interests and/or to manage and solve conflictual situations. Whether chosen or self-appointed, the negotiators and their superiors manage the power that is mandated to them. In that sense they are elite, which automatically distances them from those they represent.

Diplomatic negotiation is therefore an elitist affair and it is not easy for those who have been represented to be heard. As negotiation is about compromise and compensation, the interests of the constituency cannot, by definition, be fully materialized. Moreover, the representatives will push for their own interests, being those of their government, their international organization, or themselves and their caucus or clique.

Democratizing diplomatic negotiation is therefore hardly possible. Diplomatic negotiation is ultimately about an oligarchy deciding for those that it represents: about them, but only insufficiently on behalf of them. The negotiators are a '*negoarchy*' of mutual

understanding, with a more or less common '*negoculture*', as they could not be effective otherwise. By definition, their constituency will be unhappy with the processes and outcomes of diplomatic negotiation, while their governments might be suspicious of them in cases where they represent international regimes.

As a consequence, governments will keep the international regimes as weak as possible, while these regimes are needed to substitute trust for control in order to protect the diplomatic negotiation processes and their outcomes. The more diplomatic negotiation processes abound, the more complexity arises, the more regimes are needed to enhance their effectiveness, and the more governments will attempt to restrict the power of the regimes.

This is the *Diplomatic Negotiation Loop*, which will restrain mankind's efforts to solve its problems in a peaceful way at a time when conflicts are multiplying and the use of force is inadequate and harmful for international society. Construction and destruction go hand in hand. Diplomatic negotiation remains the most useful tool for dealing with it. Increasing our understanding of diplomatic negotiation processes will only serve to decrease misunderstandings and increase our effectiveness in settling future disputes successfully.

Samenvatting

SAMENVATTING

Diplomatiek Onderhandelen
Essentie en Evolutie

Dit boek is een studie over diplomatiek onderhandelen. Het Handvest van de Verenigde Naties beschouwt onderhandelen als het meest prominente middel om conflicten tussen staten te beheersen en, indien mogelijk, tot een oplossing te brengen. Daarmee is het een kernpunt van de internationale betrekkingen en één van de belangrijkste instrumenten in het diplomatieke verkeer. Het oogmerk van deze studie is een beter begrip te krijgen van de betekenis en de evolutie van de onderhandeling tussen staten en in internationale organisaties. Om dit doel te bereiken wordt het proces van diplomatieke onderhandelingen bezien vanuit de context waarin het zich afspeelt en de factoren die het beïnvloeden. Onderhandelen is een moeilijk grijpbaar proces dat in dit boek wordt bestudeerd vanuit zoveel mogelijk invalshoeken en over een zo lang mogelijke periode teneinde een zo compleet mogelijk beeld te scheppen.

Diplomatiek onderhandelen wordt daarbij gedefinieerd als 'een uitwisseling van concessies en compensaties in de context van de internationale orde zoals deze door de soevereine staten aanvaard wordt'. Daarbij wordt met het begrip 'diplomatiek' het onderhandelen tussen staten en in en door internationale organisaties bedoeld; dit om aan te geven dat het in deze studie niet om commerciële of andere niet-statelijke onderhandelingen gaat. Hoewel diplomatieke onderhandelingen in de dagelijkse praktijk vooral door diplomaten en andere ambtenaren gevoerd worden, zijn het uiteindelijk de politici die de beslissingen nemen en daarmee zet de politiek haar stempel op deze vorm van internationaal onderhandelen.

Diplomatiek onderhandelen is dus in sterke mate politiek onderhandelen en politiek gaat over het gebruik van macht. Hierin ligt een verschil met onderhandelingen in de private sector. Maar ook in andere opzichten onderscheidt de onderhandeling voor de publieke zaak zich van het private, bijvoorbeeld omdat zij grotendeels over teksten gaat, waar het bedrijfsleven zich vooral bekommert om cijfers. Onderhandelingen over cijfers zijn over het algemeen transparanter dan die over woorden. Diplomatieke onderhandelingen worden gekenmerkt door ondoorzichtigheid. Het onderhandelen in de publieke sector kan zowel een doorlopend proces van besluitvorming, als een ad hoc proces van crisisbeheersing zijn. Het verschil tussen beide is gradueel, maar het heeft wel degelijk invloed op de wijze van geven en nemen. Daarbij is één van de belangrijkste punten de vraag wanneer een situatie rijp is voor een onderhandeling en wanneer een onderhandeling rijp is voor een uitkomst.

Uiteindelijk gaat het er bij onderhandelen om dat over en weer toegevingen worden gedaan, zodat de betrokken partijen hun problemen kunnen oplossen en tot voor hen bevredigende resultaten kunnen komen. Onderhandelen is iets geven om iets te krijgen en die verkrijging geschiedt door elkaar tegemoet te komen en de gedane concessies te compenseren. Gaat het om twee of drie partijen, dan spreekt men van bilaterale of

trilaterale onderhandelingen. Bij meerdere partijen die nog steeds een beperkte groep vormen, spreekt men over een plurilaterale onderhandeling. Zodra meer dan vijf partijen in het geding zijn, is het gebruikelijk de onderhandeling als multilateraal te karakteriseren. Het is interessant te constateren dat het getal vijf kennelijk een effectieve onderhandeling mogelijk maakt, getuige het feit dat bij de onderhandelingen te Wenen in 1814–1815 en die in Parijs in 1919 vijf landen de dienst uit maakten, terwijl ook heden ten dage de Veiligheidsraad van de Verenigde Naties uit een pentocratie bestaat.

In deze studie gaat het om onderhandelen in een internationale context, waarbij soevereine eenheden trachten tot onderlinge overeenkomsten te komen. Die internationale context is door de deelnemende staten gelegitimeerd, waarbij elke staat in principe volledig onafhankelijk van de andere is. Deze onafhankelijkheid wordt in toenemende mate geërodeerd door de steeds verder voortschrijdende globalisering. Dit leidt niet alleen tot toenemende samenwerking, maar ook tot een steeds groter aantal fricties en daarmee een sterk toenemende behoefte aan onderhandelingen leidt. Toch speelt soevereiniteit nog steeds een centrale rol in het internationale verkeer. Op zichzelf is het niet onbegrijpelijk dat de wereld geordend is in een systeem van onafhankelijke staten, want zonder dit stelsel zou de wereld – bij gebrek aan levensvatbare alternatieven – onbestuurbaar zijn. Maar in tussen-statelijke onderhandelingen leidt dit gegeven tot een moeizaam proces van convergentie.

Om onderhandelingsprocessen te vergemakkelijken hebben staten internationale regimes tot stand gebracht en internationale organisaties opgericht waarbinnen de onderhandelingsprocessen gekanaliseerd kunnen worden en die hen in staat stellen nakoming van overeenkomsten af te dwingen. Vertrouwen is een centraal element bij onderhandelen. Immers, als dat ontbreekt valt de bodem onder de onderhandeling weg, of de onderhandeling zal nooit van de grond komen. Mensen kunnen onderling vertrouwen opbouwen, maar staten hebben belangen die hen er soms toe brengen het onderling vertrouwen te beschamen. Om die reden kan een interstatelijke onderhandeling slechts werkelijk effectief zijn als een mogelijk wegvallen van vertrouwen gecompenseerd wordt door controle. Internationale organisaties, en in breder kader internationale afspraken, zijn dus een onmisbaar hulpmiddel bij het verhogen van de waarde van diplomatieke onderhandelingsprocessen als alternatief voor oorlogvoering. Daarbij blijft onderhandelen een strijd, met woorden maar niet met wapens. Diplomatiek onderhandelen zou dus ook gekarakteriseerd kunnen worden als 'oorlog met vreedzame middelen.'

Hoe positief de rol van internationale afspraken en internationale organisaties ook is, er zitten ook zeker nadelen aan vast. Internationale organisaties mogen de onderhandelingsprocessen vooruit helpen en hun resultaten garanderen, in de praktijk is het afdwingen van gemaakte afspraken niet altijd even eenvoudig. Daar is minstens een controleregime voor nodig. Bovendien hebben internationale organisaties de neiging vast te houden aan oude gebruiken, al was het maar omdat landen niet tot nieuwe kunnen komen. Daarnaast zijn landen aarzelend om te veel macht over te hevelen en dat kan hen onder bepaalde omstandigheden goed uitkomen dat de samenwerkingsorganisaties machteloos zijn. Daarbij zullen grote landen eerder afwachtend zijn dan kleine, die immers vanwege het machtsverschil behoefte hebben aan bundeling van hun krachten, Internationale organisaties worden zelfstandige actoren en hoewel het primaat bij de

landen blijft, zal de organisatie zeker haar invloed trachten aan te wenden om haar eigen bestaan te rechtvaardigen en te continueren.

Het boek bestaat uit een inleidend hoofdstuk, vervolgens vier hoofdstukken over de aard van het diplomatiek onderhandelingsproces en daarna zes hoofdstukken over het voeren van de onderhandeling en ten slotte een hoofdstuk ter samenvatting en conclusie. In hoofdstuk twee tot en met vijf worden de belangrijkste kenmerken van het diplomatiek onderhandelingsproces onder de loep genomen. In hoofdstuk zes tot en met elf worden vergelijkende gevalsbeschrijvingen gepresenteerd, waarin elementen uit het eerste deel aan een nadere beschouwing worden onderworpen. Voor elke casus wordt een andere invalshoek gebruikt, omdat deze verschillende gezichtspunten anders onvoldoende aan de orde zouden komen. Vier casussen hebben betrekking op gevallen uit het verleden, één is hedendaags en één analyseert het diplomatieke onderhandelen in nagebootste vorm. De historische dimensie is gekozen om na te gaan op welke manier de diplomatieke onderhandeling zich in de loop der eeuwen heeft ontwikkeld en welke inzichten daaruit voor de komende jaren verkregen kunnen worden. De simulatieve voorbeelden zijn van belang omdat daaruit lessen te trekken zijn – voor onderzoekers en studenten – omdat toegang tot directe observatie van de werkelijke processen uitermate beperkt is.

Het eerste hoofdstuk bestaat uit twee delen. In het eerste deel wordt gekeken naar de relatie tussen onderhandelingspraktijk, – onderzoek en – onderwijs. Vervolgens worden de belangrijkste onderdelen van het diplomatiek onderhandelingsproces besproken, zoals onder andere de partijen en hun belangen, de stadia in het onderhandelingsproces en de rol van macht, alsmede de vraag of men distributief of integratief kan en moet onderhandelen. Onder het eerste wordt verstaan dat partijen de vruchten uit het proces zo goed mogelijk proberen te verdelen, in het tweede geval zal men ook trachten de oogst te verrijken door nieuwe elementen toe te voegen teneinde voor alle partijen een situatie te bereiken waarin ze meer uit het proces verkrijgen dan ze erin geïnvesteerd hebben. Het is daarbij interessant op te merken dat de Latijnse wortel van onderhandelen ‘nec otium’ is, wat zoveel betekent als ‘niet nietsdoen’. Met andere woorden: de handeling is geen zich herhalende arbeid, maar is veeleer een scheppende en waarde toevoegende activiteit. Dit sluit aan bij het integratieve begrip van onderhandelen dat raakt aan de vraag waar de grens ligt tussen de aangeboren (de kunst) en de aangeleerde vaardigheid van het onderhandelen.

Deel twee van het eerste hoofdstuk geeft een overzicht van de ideeën omtrent diplomatieke onderhandelingsprocessen. Eén van de belangrijkste denktanks op het onderhandelingsterrein is het ‘Processes of International Negotiation (PIN) Program’, dat zich in zijn eerste twintig jaar heeft ontwikkeld onder de hoede van het ‘International Institute of Applied System Analysis’ in Oostenrijk. Vanaf 2011 is PIN onderdak bij een andere denktank: het Nederlands Instituut voor Internationale Betrekkingen ‘Clingendael’. Het basiswerk van PIN, ‘International Negotiation’, is als uitgangspunt genomen voor het overzicht van de verschillende benaderingen van diplomatiek onderhandelen. Vervolgens is naar een aantal andere bronnen gekeken.

Het tweede hoofdstuk van dit boek, tevens het eerste van het onderdeel over de aard van diplomatiek onderhandelen, bestaat eveneens uit twee gedeelten. Allereerst wordt een beschouwing gewijd aan de evolutie van het diplomatiek onderhandelingsproces. Daarbij wordt het probleem van de relatie tussen proces en uitkomst besproken. In een

ideale wereld zou het resultaat van een onderhandeling begrepen moeten worden uit het verloop van het proces dat eraan ten grondslag ligt. Gezien de vele factoren die in het proces een rol spelen – niet het minst die van de mens met zijn karakter, ervaring, vooronderstellingen en doeleinden – is dit vrijwel ondoenlijk. Toch zit er niets anders op dan te trachten een zo duidelijk mogelijk beeld te scheppen door de omstandigheden en de ontwikkelingen aan een nadere analyse te onderwerpen. Vooral in de periode voor Westfalen speelde de onzekerheid in de internationale betrekkingen tussen dynastieën en republieken het onderhandelingsproces parten. In de periode na de zeventiende eeuw krijgen de heersers en hun diplomaten deze onvoorspelbaarheid enigszins onder controle door onderling afdwingbare afspraken te maken. Maar hier waren wel vier eeuwen voor nodig en ook heden ten dage blijft dit een zwak punt.

Het tweede gedeelte van het tweede hoofdstuk is een nadere uitwerking van het eerste deel: het belang van de staat en de vraag hoe de belangen van staten zich tot elkaar verhouden en hoe zij met elkaar verzoend kunnen worden. Indien de belangen van staten nauwelijks van elkaar verschillen, is een onderhandelingsproces overbodig, tenzij het gaat om de vraag hoe men gemeenschappelijk zal optreden. Wanneer de belangen vrijwel volkomen tegengesteld zijn is onderhandelen niet mogelijk, tenzij een verandering in de context tot nieuwe kansen leidt. Het gaat er dan om eerst de omgevingsfactoren aan te pakken om zo onderhandelbaarheid te scheppen. Niet alle betrokken partijen zullen deze onderhandelbaarheid wensen, omdat zij menen dat de uitkomst slechter zal zijn dan de situatie waarin zij zich reeds bevinden. Indien er sprake is van zowel tegengestelde als gemeenschappelijke belangen, zal het onderhandelingsproces pas kans van slagen hebben wanneer er niet alleen sprake is van tegengestelde, maar ook van gemeenschappelijke belangen. De vraag hoe de diplomaat in dit proces navigeert is daarbij zeer belangrijk. Daarom wordt aandacht besteed aan onderhandelingsgedrag.

Hoofdstuk drie gaat nader in op de relatie tussen het diplomatiek onderhandelingsproces en zijn context. In het eerste deel van het hoofdstuk wordt betoogd dat het stellen van grenzen van groot belang is, wil men tot een relevant en effectief onderhandelingsproces geraken. Het proces dient immers een bepaalde kant opgestuurd te worden teneinde de doelstellingen te verwezenlijken. Hier wordt de vergelijking gemaakt tussen een rivier en zijn oevers: de bedijking leidt het water naar de zee, waarbij het water het onderhandelingsproces is. Er worden zes begrenzingen onderscheiden: landsgrenzen, de sterkte of zwakte van staten en internationale organisaties, de rol van belangen en de invloed van de posities die de partijen innemen, de beschikbare hulpbronnen, de aanwezige regelgeving en de heersende normen en waarden alsmede de tijd als begrenzende factor in verleden, heden en toekomst. Het tweede deel van dit hoofdstuk richt zich op de internationale regimes – en speciaal de internationale organisaties – die, zo luidt een belangrijke these van deze studie, een bepalende rol spelen bij het vergroten van de succesfactor in het diplomatiek onderhandelingsproces. Hierbij wordt gekeken naar de positieve en negatieve kanten en komt de vraag aan de orde hoe deze regimes en organisaties tot stand komen.

Het vierde hoofdstuk wil het inzicht in proces en omgeving verdiepen door één van de belangrijkste fenomenen te analyseren die staten in een – over het algemeen negatieve – richting zuigen: het proces van elkaar opeenvolgende valstrikken. Een ander toepasselijk beeld is een fuik die op het eerste gezicht niet in het oog springt, maar die uiteindelijk een klemsituatie veroorzaakt waaruit de politiek zich maar met grote moeite

los kan maken, namelijk door de oude beleidsbepalers te vervangen door nieuwe. Men zou dit de contextverandering in de regerende elite kunnen noemen, maar om deze te bewerkstelligen is externe druk onvoldoende, er dient een binnenlandse wending te komen. Hiermee wordt het belang van het binnenlandse niveau van het buitenlandse onderhandelingsproces onderstreept: de rol van de alternatieve elites en de achterban, het volk en de media. Dit hoofdstuk gaat nader in op de karakteristieken van een dergelijk verstrikkend proces, de niveaus waarop het zich afspeelt, de belangrijkste factoren en de mogelijkheden een dergelijke situatie te vermijden, dan wel er een einde aan de maken. Eén en ander wordt geïllustreerd met een casus uit de praktijk. Opgemerkt moet worden dat partijen zichzelf soms met opzet laten verstrikken, zoals bij de invoering van de euro, omdat die situatie tot verdere integratie dwingt waarbij de achterban geen keuze wordt gelaten dan het volgen van hun beleidsbeslissers.

Het laatste hoofdstuk van het eerste deel van deze verhandeling analyseert de relatie tussen onderhandelen en zijn belangrijkste alternatief: geweldsgebruik. Ook nu gaat het in feite om een beschouwing waarin proces en context ontrafeld worden, zij het op een andere wijze. De vraag wordt gesteld wat nu eigenlijk de waarde van oorlog en onderhandeling is, waar het om de beheersing en de beëindiging van conflicten gaat. Vervolgens worden de historische achtergronden bezien, daarna wordt de vraag gesteld wat oorlog en onderhandelen gemeen hebben, waarin ze van elkaar verschillen, waar zij in elkaars verlengde liggen en welke rol bemiddeling kan spelen bij het overbruggen van de tegenstellingen. Bemiddeling wordt in de context van dit boek als een bijzondere vorm van onderhandelen gezien, hetgeen in de sfeer van het onderzoek naar internationale diplomatieke onderhandelingsprocessen gebruikelijk is. Dit in tegenstelling to bemiddeling in de juridische- of gezinssfeer.

Deel twee van het boek begint met hoofdstuk zes, dat ingaat op de onderhandelingen die in het midden van de zeventiende eeuw tot de Vrede van Westfalen hebben geleid. Zoals eerder gezegd, is de keuze van deze casus ingegeven door de heersende opvatting dat met deze diplomatieke conferentie een eerste aanzet tot regimebouw werd gegeven. In werkelijkheid was de overgang van het tijdvak zonder, naar het tijdvak met regimes, natuurlijk vloeiend. De internationale betrekkingen in de huidige tijd verkeren nog immer in een zeer gebrekkige situatie van internationale samenwerking, al was het maar omdat de geschapen instituties niet optimaal kunnen functioneren. Zoals hiervoor betoogd is dit zowel aan de lidstaten, als aan de aard van hun eigen organisatie te wijten. In het hoofdstuk ligt de nadruk op de gebeurtenissen te Münster, waar het overgrote deel van de internationale onderhandelingen plaats vond. Dit staat in tegenstelling tot de onderhandelingen in Osnabrück die vooral de binnenlandse situatie in het Heilige Roomse Rijk der Duitse Natie tot onderwerp van bespreking hadden. Opvallend is de gemeenschappelijke onderhandelingscultuur van de afgezanten. Taal en moraal waren die van de adel en de vorsten bevonden zich ver weg in hun respectieve hoofdsteden, zodat de edellieden en regenten in zekere zin de vrije hand hadden, nauwelijks gestoord door hun opdrachtgevers. De kern van het hoofdstuk gaat over de vraag of de onderhandelaars het verleden of de toekomst als focus namen. Ze deden veeleer het laatste. Daarmee vormt Westfalen de basis van het moderne diplomatieke onderhandelen.

Hoofdstuk zeven speelt zich in de Republiek der Verenigde Nederlanden af: de Vrede van Utrecht aan het begin van de achttiende eeuw die een einde maakte aan de eerste wereldwijde oorlog, te weten de Spaanse successieoorlog, maar ook aan de positie van

de Republiek als grote mogendheid. De verhandeling concentreert zich op het gedrag van de diplomaten en stelt de vraag of de voor Nederland overwegend negatieve vrede een positieve wending had kunnen krijgen. Hier komt ook weer de relatie tussen context en proces aan de orde. Een oorzaak voor deze – voor de Republiek – vrij onfortuinlijke vrede ligt vooral in het onderhandelingsgedrag in de voorfase van de conferentie. Het gedrag van de Nederlandse vertegenwoordigiers getuigt van tunnelvisie en besluiteloosheid, factoren waar de Fransen en de Britten, de belangrijkste vijand en de belangrijkste bondgenoot, niet door gehinderd werden. Te laat werd ingezien dat de Franse uitputting en de Britse regeringswisseling tot verschuivingen in de allianties zouden leiden, waardoor de conferentie zelf in feite een gelopen race was. Een dergelijke misrekening heeft zich ook later in de Nederlandse geschiedenis voorgedaan en wel bij de onderhandelingen over het verdrag van Maastricht. Het hoofdstuk maakt ook een vergelijking met twee voorgaande vredesonderhandelingen op Nederlandse bodem: die van Nijmegen en Rijswijk.

Het achtste hoofdstuk analyseert de onderhandelingen tijdens het Congres van Wenen, die aan het begin van de negentiende eeuw een einde maakten aan de Napoleontische oorlogen. De onderhandelaars poogden de pre-revolutionaire orde te herstellen en nieuwe revoluties te voorkomen door na afloop van het Congres tot duurzame samenwerking te komen in de vorm van de Quadruple (1814) en de Quintuple Alliantie (1818), die de basis van het 'Concert van Europa' vormden. Tijdens de conferentie speelden de vijf grote landen de hoofdrol en alle middelgrote en kleine staten werden beziggehouden met grootschalig vermaak, zo ook de mandatarissen van de gemandateerden: met uitzondering van de Russische Tsaar speelden de vorsten eigenlijk geen doorslaggevende rol. Hoewel de diplomaten, die tevens politici waren, in hoge mate de vrije hand hadden, is deze conferentie toch ook een voorbode van de verdere ontwikkelingen in de toekomst: de groeiende rol van de hoogste besluitvormer in het diplomatieke onderhandelingsproces. Bovendien begint de publieke opinie een rol te spelen en komen ook niet-gouvernementele groepen, zoals de Joden, hun opwachting maken. Dit onderdeel van de verhandeling beziet het effect van uitsluiting van de kleinere mogendheden door de grotere en het belang van de deelneming van alle machtige staten aan het vredesproces.

Hoofdstuk negen trekt de lijn door die in het Weense congres voorzichtig zichtbaar gaat worden: de opkomst van de politicus als directe deelnemer aan het diplomatieke onderhandelingsproces en de relatieve marginalisering van zijn of haar representanten. Er wordt vanuit gegaan dat politici topposities bereiken als zij daartoe en sterke innerlijke motivatie hebben en dat deze drijfkracht mede het gevolg is van een krachtig 'ego', dat op zijn beurt invloed zal hebben op het onderhandelingsproces. 'Egotiation' is de term die dit boek daarvoor lanceert: een onderhandeling waarbij het behoud van de reputatie van de onderhandelaar belangrijker is dan de landsbelangen die hij of zij moet dienen. Diplomaten zullen in veel gevallen, teneinde het belang van hun organisatie en van hun land te behartigen, hun eigen politieke leider in het gareel moeten houden. Dat is geen eenvoudige opgave, aangezien die leider degene is die de instructies geeft (of doet opstellen) en deze bovendien – in democratieën – rekening moet houden met partij en achterban. Het hoofdstuk behandelt niet één, maar zes onderhandelingen. Drie in de eerste helft van de twintigste eeuw en drie in de tweede helft: die van Parijs aan het begin van de twintigste eeuw ter beëindiging van de Eerste Wereldoorlog, die van München en Yalta aan begin en einde van de Tweede Wereldoorlog en drie onderhandelingen tijdens de Koude Oorlog. Dit alles speelt zich af in een eeuw waarin de staten zich daadwerkelijk

internationaal gaan organiseren en daartoe mondiale, regionale en functionele (thematische) organisaties opbouwen.

Hoofdstuk tien gaat verder in op de kwestie van onderhandelen en internationale organisatievorming en wel door de Europese integratie als onderwerp te nemen. De Europese Unie valt te beschouwen als de meest geïntegreerde vorm van internationale en supranationale samenwerking en is daarom bij uitstek geschikt om naar de relatie tussen proces en context te kijken vanuit de vraag hoe deze zich in de toekomst verder zal ontwikkelen. Aan de orde komen onderwerpen als de aard van de EU in het algemeen, de bijzonderheden van de Unie als een arena voor onderhandelingen, de rol van de lidstaten, de procedures, de instituties, de betrekkingen met externe actoren, de gebruikte strategieën en tactieken en de toekomst van het EU onderhandelingsproces. Dit proces wordt als het hart van de Unie gezien waarbij de institutionele factoren dienstbaar zouden moeten zijn aan de processen die de Europese problemen tot een oplossing moeten brengen. Diezelfde factoren vormen echter ook een belemmering, zoals eerder in deze samenvatting ten aanzien van andere regimes en inter/supranationale organisaties is betoogd. Informaliteit kan hier het middel zijn om de verstarrende werking van de formele fora in te perken. Maar het nadeel van informele processen is dat zij slecht zichtbaar zijn – als ze transparant waren dan zouden ze niet effectief zijn – en daardoor worden ze door de publieke opinie en de belangengroepen met wantrouwen bekeken, hetgeen de legitimiteit van de EU niet bevordert.

Het elfde hoofdstuk analyseert drie gesimuleerde gevalsstudies als lessen voor onderhandelingsvoorzitters en voor bilaterale en multilaterale onderhandelaars. Het eerste onderdeel becommentarieert de rol van voorzitters in de Europese Unie en sluit als zodanig aan bij het voorgaande hoofdstuk. De tweede casus gaat diep in op onderhandelingen in het veld. Het diplomatiek geven en nemen vindt immers niet alleen achter en rond de onderhandelingstafel plaats, maar heeft tevens bij de uitvoering van genomen beslissingen een belangrijke controlerende rol. Nakoming is, zoals eerder betoogd, van cruciaal belang. Zowel voor het vertrouwen in het onderhandelingsproces zelf, als in de verwezenlijking daarvan. De derde casus analyseert een rollenspel door gemengde groepen van diplomaten en vakdeskundigen simultaan gespeeld werd en trekt daaruit lessen voor de werkelijke onderhandelingen die in de jaren daarna zullen plaatsvinden. Daarnaast gaat dit hoofdstuk in op de mogelijkheden en de beperking van simulaties voor bestudering en voor onderwijs in diplomatieke onderhandelingsprocessen.

Hoofdstuk twaalf rondt het boek af. Het vat de hierboven gegeven conclusies samen en beziet de actoren, factoren en processen van het diplomatiek onderhandelingsproces in onderling verband. Daarenboven geeft het een drietal aanbevelingen om de effectiviteit van dit proces te verhogen. In de eerste plaats door te streven naar een diplomatiek corps waarin de verschillen tussen diplomaten en andere internationaal opererende ambtenaren niet meer ter zake doen. Ten tweede door opnieuw te pogen de structuur – en daarmee de effectiviteit van internationale organisaties – te verbeteren. Ten derde door meer aandacht te schenken aan het belang van nationale onderhandelingen die voor internationale onderhandelingen bepalend zijn. Het zou verstandig zijn de processen die van onderop komen meer ruimte te geven dan nu het geval is. In die zin is de de facto verkiezing van de voorzitter van de Europese Commissie een stap in de goede richting van een veel breder gedragen – en daardoor meer gelegitimeerd – diplomatiek onderhandelingsproces.

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Glossary

GLOSSARY

ABM	Anti-Ballistic Missile
ASEAN	Association of South-East Asian Nations
AU	African Union
BATNA	Best Alternative to a Negotiated Agreement [or: to No Agreement]
BCE	Before the Common Era
BRICS	Brazil, Russia, India, China and South Africa
CE	Common Era
CFSP	Common Foreign and Security Policy
CI	Challenge Inspections
COREPER	*Conseil des Représentants Permanents* [Council of Permanent Representatives]
CSCE	Conference on Security and Cooperation in Europe
CSDP	Common Security and Defence Policy
CT	Control Team
CTBT	Comprehensive Nuclear Test-Ban Treaty
CTBTO	Comprehensive Nuclear Test-Ban Treaty Organization
CWC	Chemical Weapons Convention
DRP	Diplomatic Role Play
EEAS	European External Action Service
EIPA	European Institute of Public Administration
EMU	European Monetary Union
EU	European Union
GATT	General Agreement on Tariffs and Trade
HCNM	High Commissioner on National Minorities
IAEA	International Atomic Energy Agency
ICC	International Criminal Court
ICJ	International Court of Justice
IFE	Integrative Field Exercise
IGC	Intergovernmental Conference
IGO	Intergovernmental Organization
IIASA	International Institute for Applied Systems Analysis
IMF	International Monetary Fund
ISP	Inspected State Party
IT	Inspection Team
MAD	Mutual Assured Destruction
MBS	Mutual Beneficial Stalemate
MEO	Mutual Enticing Opportunity
MHS	Mutual Hurting Stalemate
NAFTA	North American Free-Trade Agreement
NATO	North Atlantic Treaty Organization

NGO	Non-governmental Organization
NNN	Netherlands Negotiation Network
OCPF	Other Chemical Production Facilities
OPCW	Organization for the Prohibition of Chemical Weapons
OSCE	Organization for Security and Cooperation in Europe
OSI	On-Site Inspection
PCA	Permanent Court of Arbitration
PIN	Processes of International Negotiation (Program)
POE	Point of Entry
PON	[Harvard] Project on Negotiation
PPO	Painful Pressure from Outside
PRC	People's Republic of China
PTS	Provisional Technical Secretariat
QMV	Qualified Majority Voting
RAS	Restricted Access Site
Relex	*Relations Extérieures* (External Relations)
SADC	South African Development Community
SCO	Shanghai Cooperation Organization
SDI	Strategic Defense Initiative
SIR	School of International Relations (of Iran)
TTE	Table-Top Exercise
UK	United Kingdom
UN	United Nations
UNDRO	United Nations Disaster Relief Organization
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNSC	United Nations Security Council
US	United States
USSR	Union of Soviet Socialist Republics
WTO	World Trade Organization
ZOPA	Zone of Possible Agreement

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Curriculum Vitae

CURRICULUM VITAE

Paul Meerts was born on 5 September 1946 in The Hague, the Netherlands. He studied Political Science and Constitutional Law at the University of Leiden, obtaining his MA in 1973 and his Ph.D. in 2014. In 2001 the National University of Mongolia in Ulan Bator awarded him the title of *Doctor Honoris Causa*.

In 1974 Meerts worked on Dutch politics at the Documentation Centre of Dutch Political Parties of the University of Groningen and at the Political Science Department of Leiden University. From 1975 until 1978 he researched the social and political background of Dutch and Belgian parliamentarians at the Parliamentary Documentation Centre of the University of Leiden.

In 1978 the Netherlands Society for International Affairs appointed Meerts to organize and tutor its courses for training young Dutch diplomats, naval officers, military attachés and post-graduate students from universities, in alliance with the Netherlands Universities Foundation for International Cooperation. Meerts went on to specialize in simulation exercises.

When the Society merged into the Netherlands Institute of International Relations 'Clingendael', Meerts became Head of the Department of Training and Education (1983–1989) and subsequently Deputy-Director (1990–2006) and Adviser to the Director (2006–2011). After retirement, he stayed with the Institute as Senior Research Associate.

During his Clingendael era, Meerts specialized in international negotiation, training diplomats from one hundred countries around the world, was trainer of the European Diplomatic Programme since its inception, and was a visiting professor at the Economics University (Prague) and the UNESCO Institute for Water Education (Delft), as well as a visiting lecturer at the University of Leiden.

Meerts became connected to the International Forum on Diplomatic Training in 1985 and to the Processes of International Negotiation (PIN) Program in 1989. He has been a member of its Steering Committee since 1999, and in 2011 PIN became a programme of the Clingendael Institute. Paul Meerts is a member of the International Advisory Board of the *Journal of International Negotiation*.

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Index

INDEX

Aalbers 166, 172
Aall 130
Abbé de Saint-Pierre 21
Aberdeen 196
ABM 84
Abu-Machin 50, 51
Aceh 132
Afghanistan 28, 70, 82, 85, 104, 114, 124, 220, 303
Africa 33, 117, 165, 208, 288
  African 12, 262, 267, 310
Aggestam 19, 57, 58, 117
Al-Assad 74
Albania 261
Albin 21
Albrecht-Carrié 57, 58, 187
Alexander (Serbia) 223
Alexander I (Russia) 191-196, 198, 203-205, 209-211, 214, 318
Algeria 77
Al-Qaida 84, 220
Amarna 51, 119
Amsterdam 144, 152, 154, 169, 174, 259, 264, 303
Anatolia 224
Anderson 143, 152
Anglo-Saxon 288
Anjou 168
Anne 171
Anstey 63, 128, 242
Antwerp 144, 145, 158
Arab League 128
Arabia (Arab) 36, 60, 223
Aragon 146
Arendt 80, 102
Armenia 129
  Armenians 77, 101, 129
Arnold 247, 253, 264
Ascherson 125
ASEAN 104, 222
Ashton 256
Asia 33, 165, 196, 208
  Central 125
  East Asia 117, 222
  Southern 288

Asia Minor 125, 226
Asian 12, 104, 310
Assyria 119
Atatürk 224
Atlantic 124, 215
Attlee 232
AU 86, 104, 222
Audebert-Lasrochas 52, 185, 186, 200, 203, 206
Augsburg 147, 159
Australia 223, 224
Austria 170, 185–198, 200, 201, 203–207, 209, 211, 223, 231, 236, 265, 294, 303, 335
Austrian 74, 168, 169, 185, 188, 191, 193, 194, 198, 204, 205, 210, 318
Austria-Hungary 223, 224
Axelrod 21
Azerbaijan 100, 129
Azerbaijanis 129, 303

Babylonia 50, 52, 119, 129
Bac 261, 268
Bad Godesberg 230
Bagration 195, 204
Bailer 264
Balfour 224
Balkan 33, 102, 117, 234, 261, 266, 267
Ball 254
Baltic 147, 159, 190
Baltic Sea 124
Banat 224
Barings Bank 108
Barroso 262
Barry 38
Barsade 113
Basle 192
BATNA 33, 94, 250
Bátonyi 231
Baudet 72
Bautzen 191
Bavaria 145, 168, 170, 189, 198, 206
Bay of Pigs 236
Bayer 256
BCE 50, 51, 119
Beach 254, 255, 259
Beardsley 130–133
Beckman 50
Beeuwkes 163
Beijing 220, 221, 236, 237
Belarus 125
Belgium 72, 74, 145, 146, 158, 169, 201, 206, 223, 224, 265
Belgians 16, 25
Flanders 158
Flemish 66, 105, 144, 158

Benes 223
Bentinck 174
Berchtesgaden 230, 236
Bercovitch 127, 130–132
Berg, Van den 266
Berkvens 274
Berman 38, 76
Bern 234
Bernadotte 198
Bernard 197
Berridge 20, 21, 42, 49, 54, 56, 62, 63, 103
Besnardière 198
Best 211
Beyers 259
Bismarck 160, 206
Black 53, 190, 191
Blair 97
Blake 234
Blandy 113
Blücher, Von 210
Bolingbroke 170, 172, 173
Bolshakov 235
Bolshevik 223, 241
Boomen, Van den 274
Börzel 246
Bos, Van den 103, 173, 255
Bosnia 26, 61, 62, 223, 261
Bot 178
Both 113
Bottom 88
Boufflers 174
Bouillon 201
Bovis 101
Brabant 145, 158
Bratianu 220, 223
Brazil 78, 85, 296, 298, 299, 301, 302
Bremen 199
Brezhnev 221, 236–238, 240, 241, 319, 325
Briand 16
BRICS 85
Brignole-Sale 199
Bristol 171
Brockdorff-Rantzau, Von 224, 228
Brockner 93
Brower 162
Bruin, De 165
Brussels 87, 103, 178, 202, 215, 251, 252, 261, 262, 264, 268, 313, 322, 323
Buergin 113
Buhite 232, 233
Bulgaria 125, 223, 224, 265
  Bulgarian 53, 125, 224

Bull 15
Buonanno 257-260
Burchill 43
Bush 78, 84, 85, 220
Buys 169, 171, 173
Byzantium 53

Callières, De 11, 21, 43, 167, 186
Calvinism 142, 144, 146, 159
Camp David 130, 132
Canada 223, 303
Cannae 97
Capodistrias 194
Carème 197
Caribbean 262
Carter, C. 259
Carter, J. 103, 132
Caspian Sea 302, 303
Castille 146
Castlereagh 192, 193, 196, 197, 200, 203, 204, 210, 211, 214, 226
Catalonia 144-146
  Catalans 150, 172
Catholic 141, 142, 144, 145, 147, 148, 152, 157, 159, 160, 174, 197, 200, 235, 316
Caucasus 33, 102
  South 129
CE 51, 53
Cede 243
Cellere, Di 224
Celts 125
Ceylon 208
CFSP 250, 258, 260, 262, 267, 269
Cha 113
Chamberlain, A. 230
Chamberlain, J. 230
Chamberlain, N. 25, 220, 230-232, 235, 236, 240-242, 318
Channel 210
Charles II 168, 169
Charpin 51
Chaumont 192, 216
Chechnya 60, 108
Chigi 156
China 49, 60, 62, 77-79, 85, 100, 124, 143, 189, 221, 223, 224, 226, 237, 288, 296, 298-302, 305
  Chinese 36, 69, 220, 236, 240
Christian 143, 151, 152, 155, 157, 159, 190, 206, 316
Christina 155
Chung 34, 69, 95, 118
Churchill, J. 169
Churchill, W. 221, 232-234, 240, 241, 319, 325
Chwarezm 53

CI 297
Cilicia 226
Clancarty 197
Clark 167
Claude 81
Clausewitz, Von 29, 118, 122
Clemenceau 71, 220, 222-228, 240, 241
Clingendael Institute 11, 16, 150, 274-276, 335
Cohen 50, 51, 53, 56, 79
Cold War 16, 27, 32, 38, 78, 82, 84-86, 93, 125, 207, 221, 234, 237-240, 319, 338
College of Europe 275
Cologne 154, 168, 171
Colson 21, 39, 56
Consalvi 198
Consbruck 171
Constantinople 202
Constantinou 80
Contarini 156
Coolsaet 65
Coombs 172
Copenhagen 261, 263
COREPER 43, 259, 320
Cossack 205
Coulaloglu 261
Courland 197
Cram 247
Crimea 73
Croatia 261, 265
  Croats 106, 125, 223
Crocker 130
Crookall 274
Cross 36
Crump 31
CSCE 78, 86, 213
CSDP 250, 258, 260
CT 292
CTBT 84, 281-289, 291-294, 305, 306
CTBTO 274, 281, 286-289, 291, 294, 295, 304
Cuba 241
  Cuban 235
CWC 296-299, 305
Cyprus 64, 70, 265, 312
  Cypriots (Greek) 70, 312
  Cypriots (Turks) 70
Czartoryski 194
Czech 223, 265
Czechoslovakia 119, 223, 229, 231
Czechs 223, 230

D´Huxelles 171
D'Avaux 155, 169
Daladier 220, 231
Dalberg 197
Darwin 232
David 119
Davies 72, 87, 188, 200, 207, 208
Delreux 242, 258
Denain 167, 170
Denmark 72, 119, 129, 147, 148, 157, 185, 195, 198, 206, 265, 279
Dennen, Van der 117
Depledge 82, 83
Deursen, Van 167
Dickmann 143, 148, 151, 154
Dierickx 259
Dinan 247
Dobrynin 237, 238, 319
Doesburg 167, 169, 171
Dominions 223, 224
Donelan 59
Donohue 21
Doran 161, 181, 186
Dorothée 197
Dresden 191, 192, 205
Drieskens 262
DRP 290
Druckman 21, 36, 37, 41, 66
Duchhardt 143
Duke 263
Dupont 27, 32, 39, 52, 87, 88, 185-187, 200, 201, 203, 206
Dür 248, 249, 253, 264
Dussen, Van der 169, 171

East 82, 86, 325
  Eastern 214, 325
Eden 230
EEAS 260, 262, 263
Egypt 119, 125
  Egyptian 61
Eighty Years' War 145, 146, 150, 157, 158, 161, 315
EIPA 275
Eisenhower 234
Eisma-Lubbers 150
Elba 188, 191, 193, 196, 203, 210, 214
Elgavish 50, 51
Elgström 70, 246, 258, 265, 275
EMU 74, 266
Eosander 167
Es, Van 118, 265
Eshnunna 50
Estonia 261, 265

Ethiopia 143
Eugenius 170, 198
Europe 30, 33, 51, 55, 56, 70, 71, 81, 85, 87, 104, 105, 121, 123, 134, 141, 143-149, 151, 152, 157, 158, 160, 161, 165-167, 171, 175, 176, 178, 180, 181, 188-191, 193, 194, 196, 200, 202, 203, 205-209, 212, 213, 215, 216, 221-225, 230, 231, 234, 240, 245, 247, 250-253, 260, 262-264, 266, 269, 275, 316, 317, 320, 324, 328, 338, 339
  Central Europe 70, 82, 95, 124, 125, 152, 157, 165, 175, 189, 191, 226, 252
  Eastern Europe 82, 95, 191, 229, 231
  Europeans 12, 33, 63, 71, 195
  Southern Europe 125
  Western Europe 82, 95, 102, 125, 143, 148, 152, 157, 160, 165, 167, 168, 171, 175, 247
European Union 16, 26, 30, 43, 49, 60, 62-65, 70, 71, 76-80, 85-88, 93, 96, 103, 104, 107, 109, 110, 124, 128, 131, 134, 151, 171, 178, 179, 189, 199, 214, 215, 222, 226, 245-269, 274-277, 279, 302, 303, 309, 312, 313, 319, 320, 322, 327, 339

Fabius the Procrastinator 97
Faizullaev 15, 219
Falger 273
Faure 22, 27, 32, 39, 75, 93, 176, 197, 213-215
Feakes 295
Fénelon 21
Ferdinand III 148, 154
Fernandez Martin 263
Finland 147, 198, 205, 265, 279
  Finnish 302
First World War 16, 31, 52, 56, 71, 72, 81, 127, 128, 189, 211, 220-222, 232, 318, 338
Fisher, H. 230
Fisher, R. 39, 40, 61, 94, 98, 151, 250
Fleur d'Eau 239
Fontainebleau 193
France 30, 39, 54, 56, 65, 71, 72, 85, 119, 120, 128, 141, 144-146, 148-152, 155, 156, 159-161, 166-168, 170-172, 175, 176, 186-193, 195-197, 199-204, 206-209, 211, 214, 215, 220, 222, 225, 229, 231, 234, 241, 265, 269, 279, 296, 298, 299, 301, 302, 316, 317
  French 16, 36, 39, 40, 50, 58, 70, 71, 74, 77, 78, 85, 102, 105, 113, 117, 120, 143-150, 154, 155, 158-160, 167-180, 185-199, 202-204, 207, 209-214, 222, 224, 225, 231, 240, 252, 257, 258, 265, 310, 316, 317, 324, 338
Francis I 195, 210
Frankel 59, 104
Frankfurt 192, 199, 266
Franks 125
Frederick Augustus 198
Frederick IV 198
Frederick VI 195

Frederik Hendrik 144, 145
French Revolution 160, 190, 210, 213, 324
Freud 219
Frey M.L. 121, 171, 177
Frey, L. 121, 171, 177
Freymond 36
Friedman 64
Frisians 158

Gama, Da 199
Garb 118
Garnett 96
Gasparini 57
GATT 82
Gaulle, De 77, 98
Geertruidenberg 169
Geneva 123, 171, 220, 221, 235, 239, 294
Genoa 199, 201
Gentz, Von 195, 198, 214
George III 195
George IV 197
George, A. 129
George, L. 171, 220, 222, 224-228, 239-241
Georgia 129
Gerard 170-173
Germanic 231, 253
Germany 28, 65, 70-72, 85, 125, 127-9, 141, 142, 145-148, 152, 154, 158-161, 187-189, 191, 192, 194, 196, 199, 201, 204, 205, 215, 223-225, 232, 241, 255, 265, 269, 279, 302, 315, 316, 324
German 16, 25, 39, 40, 70, 71, 74, 76, 84, 85, 95, 102, 103, 108, 113, 146, 147, 148, 150, 151, 155, 158-161, 167, 168, 170, 171, 192, 194, 197-199, 201, 204, 206, 210, 223-225, 228-232, 234, 240, 252, 257, 322
Geurts 155
Geyl 173
Ghent 210
Ghervas 165
Ghosn 176
Gibraltar 172, 324
Giegerich 262
Godolphin 170
Goodfield 27, 102
Gorbachev 221, 239-241, 319, 325
Gordon 196
Gouey 198
Gower 262
Graham 118
Gray 261

Great Britain 43, 141, 161, 167-172, 175, 176, 179, 185-191, 193, 196, 197, 200, 203, 204, 207, 211, 214, 215, 220-222, 229-231, 316
British 16, 70, 72, 102, 167-179, 185, 186, 189, 191-193, 195-197, 199-201, 203, 207-210, 214, 224, 226, 227, 230, 232, 240, 241, 252, 256, 302, 338
England 108, 166, 168-17-, 173, 195, 229, 323
English 36, 40, 78, 117, 146, 149, 170-173, 176, 180, 185, 222, 226, 252, 328
United Kingdom 28, 71, 85, 125, 199, 202, 206, 215, 226, 235, 242, 255, 265, 269, 274, 276, 294, 302, 304
Great Lakes Region 33
Greece 64, 70, 72, 223, 265, 312
Greeks 52, 224, 312
Griessmair 101
Grinsven, Van 257
Groen 263, 267
Groenveld 142, 143, 148, 149, 151
Groom 81
Grossbeeren 192
Grotius 77, 142
Gruner 187, 216
Gruyter, De 239
Gstöhl 260, 263
Guggenbühl 256
Guicciardini 21
Guimon 150
Gulf Oil 110
Gustavus Adolphus 147
Guzmán, De 144

Haass 79
Habeeb 28, 29
Habsburg 145, 159, 167-169
Haffner 230, 232, 241
Hague, The 31, 54, 81, 144, 169, 197, 211, 216, 267, 274, 275, 309
Haiti 132
Hale 247, 266, 268
Hall 20
Ham, Van 84
Hamburg 148, 154, 199
Hamilton 52, 156, 171, 172
Hammurabi 50, 51
Hampson 70, 122, 130
Händel 118, 171
Hannay 43
Hannibal 97
Hanover 168, 170, 171, 173, 195, 206
Hanschel 84
Hanzhang 118, 119
Hardenberg, Von 193, 195, 196, 198, 200, 203, 204, 205, 214
Harley 172, 173

Harvard 33, 41, 235
Hatton 173, 174
Hauck 280
Hayes 97
HCNM 261
Heidelberg 135
Heinsius 169, 170
Heisenberg 254, 258
Held 247, 266, 268
Helsinki 78
Hemery 70, 226, 274, 275
Hemmer 118
Henry IV 145
Hesp, Van den 274
Hindus 72
Hippel, Von 113
Hiram 51
Hirschmann 106
Hit 50, 51
Hitler 26, 119, 127, 220, 229-232, 236, 240-242, 318
Hix 259
Hoang 98
Hocking 247
Hofstede 104
Holsti 52, 118, 134, 135, 165, 166, 187, 189, 221
Holy Roman Empire 141, 142, 146-148, 156, 158-161, 166, 170, 174, 199, 322, 337
Holy See 148, 150, 152, 160, 211
Hooghe 251
Hoogstraten 211
Hosli 247, 253, 264
House 224, 225
House of Orange 145, 146, 168
Houtem, Van 111
Huguenots 145, 167, 172
Huitsing 175
Humboldt, Von 195, 196, 198, 214
Hungarian 53, 223
Hungary 223, 224, 265
Hunter 16
Hussein 61, 74, 107

IAEA 304
Iberian peninsula 146
Iceland 28, 265
IFE 290
IGC 265
IIASA 11, 13, 294, 335
Iklé 21, 38, 117
IMF 82
India 49, 72, 78, 85, 93
ICJ 31, 211

ICC 26, 84, 86
Iran 29, 100, 125, 303, 305
  Iranian 29, 125, 302, 303
Iraq 61, 70, 74, 77, 85, 107, 114, 124, 129
Ireland 223, 265, 279
  Irish 102, 196, 235
ISP 281-284, 289-295, 297
Israel 36, 60, 125, 305
  Israeli 106, 128, 130
Israël, J. 173
Istria 228
IT 281-284, 287, 289-295
Italy 28, 29, 52, 146, 189, 198, 199, 201, 206, 207, 215, 220, 222, 225, 228, 231, 234, 265, 269, 279
  Italian 16, 52, 53, 150, 175, 192, 199, 206, 224, 228, 231, 252
Japan 77, 78, 125, 132, 222, 233, 280
  Japanese 220, 222, 224
Jenkinson 197
Jerusalem 51
Jesus Christ 226-228
Jews 94, 95, 108, 199, 201, 231, 338
Johnson 294
Joll 220
Jönsson 19, 20, 27, 37, 57, 58, 70, 117, 153, 246, 265
Jordan 125
Judaism 53, 241
Juvaini 53

Kabul 70, 220
Kahn 37
Kalisz 191
Kamp 113
Kant 54, 117
Kaplan 20
Karns 20, 216
Katzbach 192
Kaufmann 40, 151, 275, 278
Keens-Soper 42, 43, 54, 174, 177
Kennedy, B. 235
Kennedy, J. F. 221, 234-236, 240-242, 319, 325
Kennedy, J. 235
Kent 36
Kenyon 295
Keohane 80, 81, 83, 142
Kerremans 242
Keukelaire 263
Keulen, Van 251
Keynes 220, 224
Khazar Sea 303
Khazar 53
Khrushchev 221, 234-237, 239-241, 319

Kibris 261, 268
Kiel 198
Kilmann 35, 106, 107, 122
Kinmochi 220, 222
Kirkpatrick 230
Kissinger 20, 55, 57, 58, 186, 209, 221, 226, 236-240, 319, 325
Klabbers 23
Kleine 264
Knodt 263
Knuyt, De 155
Kocharyan 129
Koeszegi 101
Koput 113
Kornienko 239
Koskenniemi 21, 141
Kosovo 82, 105, 124, 224, 261, 303
  Kosovars 303
Kosygin 238
Krasner 81, 88, 143
Kremenyuk 26, 31, 32, 36, 86, 165
Krüdener, Von 193
Kuhrt 49
Kulm 192
Kun 224
Kuomintang 124
Kupchan 78
Kurdistan 224
Kuwait 61

La Tour du Pin 197, 198
Labrador 199
Laloy 233
Landau 261
Lang 246, 278
Langenberg 252
Langhorne 52, 82, 156
Langres 192
Lansing 224
Latin America 81, 146, 223, 288, 310
Latin 58, 71, 80, 150, 180, 252, 253, 316, 335
Latvia 265
Lausanne 16
Lax 105
Laxenburg 11, 31, 294
Layne 78
League of Nations 30, 54, 81, 85, 199, 207, 221, 222, 224, 225, 227
Lebanon 125
Leeson 108
Leguey-Feilleux 20
Leipzig 191, 192, 206
Lempereur 52, 168

Lenin 216, 239
LePoole 103
Lesaffer 165
Lewicki 21, 38, 39, 110
Lewis 247
Lijphart 79
Lilliënrot 167
Limburg 158
Linde, Van der 302
Linklater 43
Lipschits 273
Lisbon 245, 255, 256, 258, 259, 267
Lithuania 147, 265
Litterer 21
Liverpool 197, 210
Lodge 246, 247
London 169-171, 193, 197, 210, 214
Londonerry 196
Longueville, De 154
Lorraine 171
Louis XIV 30, 54, 119, 149, 166-169, 172, 174 190
Louis XVIII 193, 210, 214
Löwenhielm 198
Lübeck 199
Lublin 147
Lutheran 142, 147, 159
Luttwak 122
Lützen 191
Luxembourg 60, 72, 158, 206, 254, 265
Luykx 187

Maastricht 97, 103, 173, 245, 255, 338
Macedonia 224, 261
Machiavelli 20, 124, 197, 225
Mack 135
MacLachlan 172
Macmillan 71, 222-228, 235
MacNaughtan 263
MAD 239
Madrid 154, 261
Mainz 193, 198
Malaysia 86
Malenkov 234
Malmesbury 96
Malplaquet 169
Malta 265
Mans 274
Mao Zedong 124, 221, 235-237, 241, 319, 325
Marcos 150
Mari 50-52
Marie 223

Marie-Louise 195
Marks 251
Marlborough 168, 169, 173
Marshall Aid 245
Marx 101
Marxism 231, 239
Masaryk 223
Mastenbroek 24, 35, 40, 60, 175, 179, 214
Mateo 248, 249, 253, 264
Mattingly 52
Matveyev 149
Maurits 145
Maximilian I 198
Mayer 228
MBS 27
McKibben 265
Mearsheimer 59, 81
Mediterranean 124, 154, 196, 302
Meerts, F. 261
Meerts, P. 15, 21, 35, 36, 50, 52, 53, 56, 57, 63, 70, 71, 75, 80, 85, 86, 91, 96, 100, 103, 107, 109, 115, 117, 134, 139, 143, 150, 163, 166, 167, 175, 179, 181, 183, 214, 217, 219, 226, 235, 243, 247, 248, 265, 273-275, 278, 281, 294, 295, 302
Meijer Drees 146
Melamud 281, 294
Melissen 161
Menkel-Meadow 41
Menshikov 236
MEO 27, 123
Mesnager 171
Mesopotamia 51, 119
Metternich 185, 188, 191, 192, 194, 195, 197-200, 203-205, 207, 209, 210, 214, 216, 318
MHS 26, 27, 123
Michels 94
Middle East 33, 49, 102, 117, 119, 132
Milosevic 107
Mingst 20, 216
Minorca 172
Minsk 129
Minto 21
Mitchell 132
Mittani 119
Modena 171
Mongar 235
Mongolia 53, 100
Mongol 53, 105, 147
Monnet 71, 225
Montenegro 224, 261
Moran 51
Moravcsik 81

Morgenthau 57, 81
Morin 113
Moscow 74, 194, 196, 220, 221, 231, 234, 236-240
Movius 274
Mubarak 61
Mühlen 39, 274
Munich 61, 119, 124, 220, 229-232, 318, 338
Münster 15, 53, 141, 143, 148-159, 161, 166, 172, 174, 175, 210, 213, 315-317, 322, 324, 337
Murád 221, 222
Murray 197
Muslims 63, 72
Mussolini 220, 228, 231

NAFTA 84
Nagorno-Karabakh 129
Nanking, Rape of 77
Nantes 145
Naples 146, 189, 206, 207
Napoleon Bonaparte 72, 81, 120, 185-196, 198-206, 208, 210-214, 226, 324, 338
Napoleon III 206
Nassau 145, 194, 206
NATO 30, 82, 85, 86, 105, 110, 124, 134, 222, 245, 302
Naurin 41, 245, 265
Nazis 94, 95, 239
Near East 50-52
Nesselrode 194, 200
Netherlands 13, 29, 41, 72, 74, 77, 79, 121, 141-150, 152, 158, 159, 165, 167-174, 176, 178, 189, 192, 201, 203, 206, 208, 213, 215, 255, 265, 273, 294, 315, 316, 337, 338
  Dutch 13, 25, 29, 41, 43, 74, 77, 97, 103, 108, 119, 143-152, 155-160, 165, 167-179, 208, 280, 304, 316, 317
  Holland 145, 155, 166, 174, 179
Neumann 65
Neveu 175
New York 110-112, 178
Ney 210
Nicholas II 211
Nicolson 21, 96, 216, 227, 228, 252
Niemann 263, 267
Niemöller 95
Nijmegen 165, 172, 174, 175, 178, 317, 338
Nitze 237
Nixon 221, 226, 236-238, 240, 241, 319, 325
NNN 41
Noaille 198
Nobel 295, 296
Nordholt 227
North America 11, 33
North Atlantic 146
North Korea 125, 132

North Sea 230
Northedge 59
Norway 72, 198
Nugent 246, 247, 257-260
Numelin 52
Nye 78

Obama 78, 85, 114
Obersalzberg 230
Oberthür 263, 267
Odell 15, 245
Oman (Omani) 106
Onnekink 165, 168-170, 173
OPCW 125, 274-301, 304-306
Orlando 220, 222, 228
Orléans 210
OSCE 30, 78, 86, 88, 213, 261, 303, 309
OSI 282-294, 304
Oslo 128-130, 132
Osnabrück 53, 141, 148, 150, 151, 156, 157, 159, 166, 172, 210, 213, 315, 316, 337
Ottawa 81
Otte 42, 54
Ottoman Empire 77, 143, 190, 209, 223, 224, 316
Owen 242
Oxenstierna, A. 154
Oxenstierna, J. 154, 155

Pacific Oil 110-112, 325
Pacific 233, 262
Pakistan 72, 93, 236, 303
Palatinate 73, 143, 171
Palestinians 36, 101, 107, 130
Papal States 170
Paret 118
Paris 56, 71, 110-112, 135, 171, 173, 186-188, 191-193, 197, 200, 202, 203, 209-212, 220-225, 228, 229, 231, 303, 314, 316, 318, 320, 322, 324, 334, 338
Pasic 223
Patton 39, 40, 94, 98, 250
Pauw 155
Pearton 226, 227
Perlot 83, 249, 274, 295
PCA 31, 54, 211
Persia 53, 143
Petrov 262
Pfetsch 39, 246, 247
Philip IV 144, 168
Philip V 169
Philips 103
Phillips 118

Phinnemore 262
Pichon 225
Pilsudski 223
PIN Program 11-13, 31, 41, 186 294, 335
Pinker 135, 246
Pitt 171, 172
POE 291
Poelhekke 144, 150, 151, 154-157
Poincaré 225
Poland 147, 148, 157, 170, 186, 188-191, 193, 194, 199, 201-205, 207, 210, 215, 223, 231, 265, 269
  Polish 74, 185, 191, 194, 196, 198-200, 203-205, 208, 223, 274
Polignac 171, 173
Pomorska 262
PON 33, 41
Portland 174
Porto Santo 199
Portsmouth 132
Portugal 121, 142, 146, 168, 170, 172, 189, 199, 200, 202, 206, 208, 213, 215, 265
  Portuguese 145, 150, 153
Postma 80
Potsdam 232
Powell 36
PPO 86
Prague 191, 199, 205
Princen 263
Protestant 63, 141, 142, 144, 145, 147, 148, 151, 152, 155, 157, 158, 160-162, 171-174, 315, 316
Pruitt 34, 35
Prussia 168, 170, 172, 186-188, 190-194, 196, 198, 200, 201, 203-206, 210
  Prussian 118, 191, 194-196, 203, 204, 207, 211, 225
PTS 289, 291-293
Puskas 245
Putin 108
Putnam 248, 250, 263

QMV 252, 254, 255, 258, 260, 278, 279

Rabin 128
Raiffa 21, 32, 37, 38, 105
Ramaker 294
Ramses II 119
RAND Corporation 38
Randle 117
RAS 292,
Rastatt 168, 170, 172
Raube 260
Ray 66, 133
Reagan, N. 240

Reagan, R. 221, 239-241, 319, 325
Rechteren 171
Reede, Van 155
Reichenbach 191
Reliant 110-113
Rembrandt 55
Rey 193, 194
Reynolds 226, 230-240
Rhine 146, 159, 252
Rhineland 71, 145, 192, 193, 204, 207, 225
Ribbentrop, Von 230
Richelieu 42, 54
Rietbergen 143, 155, 160, 175
Risse 264
Rivera, De 104
Roberts 166
Robinson 171
Rogers 237, 238
Roman Empire 119, 166, 252
Romania 220, 223, 224, 261, 265
Rome 84, 134, 199, 202
Rompuy, Van 256
Rood 269
Roosevelt F. 221, 232-234, 240, 241, 319, 325
Roosevelt, T. 132
Rosoux 56, 128, 177
Ross 99, 113
Rossi 199
Rothschilds 199
Rouillé 169
Rubin 21, 35, 36, 59, 61, 86, 93, 105
Rumiantsev 194
Russia 28, 29, 72, 73, 85, 108, 124, 129, 132, 147, 160, 186-196, 198, 200, 203-205, 210, 211, 215, 221, 223, 225, 231, 233, 235, 237, 266, 292, 296, 298-303
Russian 36, 37, 78, 189, 191-197, 203-205, 207-211, 214, 221, 235
Ruthenia 223
Rwanda 132
Ryswick 43, 54, 149, 150, 153, 165, 167, 168, 172, 174, 175, 178, 317, 338

Saarland 71, 225
SADC 267
Salomon 16
Salvius 155
San Francisco 56, 134, 165, 180, 221
San Marzano 199
Sandeman 194
Saner 24, 40, 65, 80, 100, 106, 123
Sardinia 199, 201, 206
Sargysyan 129
Satow 19

Saudi Arabia 125
Saunders 21, 38
Savoy 168, 170, 172, 206
Saxony 170, 185, 186, 189, 191, 193, 195, 198, 200, 201, 203-208, 210
Schäfer 84
Schaik, Van 255, 267
Schalker 274
Schama 192
Schecter 120
Scheldt 144
Schelling 93, 134
Schendelen, Van 250
Schepper, De 145, 147
Schimmelfennig 93
Schleswig-Holstein 198
Schmidt 230
Schneider 81
Schout 256
Schrijver 141, 161, 165
Schultz 239
Schüssler 40
Schutte 173
Schweizer 43
SCO 309
SDI 239
Sebenius 36, 105
Second World War 16, 21, 26, 30, 31, 54, 56, 71, 72, 76, 81, 85, 108, 128, 129, 188, 189, 207, 208, 221, 223, 225, 228, 232, 234, 236, 245, 265, 318, 338
Semitic 231
Senlis 303
Serbia 105, 107, 223, 261, 303
Serbs 125, 223, 303
Sergeev 33
Servien 155
Shandong 224
Sharp 203, 222, 273
Siccama 135
Sicily 146
Siebe 37, 97
Silesia 226
Silva, De 49
Silveira 198
Simonson 110
Sinzendorf 171
SIR 302
Sjöstedt 126, 246, 269
Skinner 124
Slaughter 89
Slovakia 223, 265

Slovenia 265
Slovenes 223
Smith, K. 263
Smith, M. 262
Smith, R. 118
Smolinski 261
Smyrna 224
Snezhinsk 292
Solomon 51
Somalia 69
Sonnino 225, 228
South Africa 78, 85, 208, 223, 224, 296, 298-302
South Korea 125
Soviet Union 28, 34, 71, 78, 82, 86, 93, 104, 108, 123-125, 149, 187, 188, 200, 221, 223, 225, 228, 229, 231-241, 245, 291
Soviets 35, 36, 38, 78, 226, 236, 237
Spain 141, 142, 144-146, 148-150, 152, 154, 156, 158, 159, 161, 166, 168, 169, 172, 174, 188-191, 197, 199-203, 206-208, 211, 213, 215, 265, 269, 302, 316, 324
Spanish 36, 74, 143-147, 149-153, 155, 158-160, 165-169, 172, 190, 207, 208, 252
Spanish Succession Wars 167-169, 337
Spanish West Indies 172
Spector 73, 74, 83, 295
Spence 263
Spiller 40
Sri Lanka 132
St Paul 171
St Petersburg 147
Staden, Van 56, 84, 141, 161, 242, 245, 268
Stadtschlaining 303
Stalin 108, 221, 232-235, 239-242, 319, 325
Stamboliski 224
Stasavage 219
Staw 98, 99, 110, 113
Stein 274
Stein, Vom 194
Steward 196
Stork-Penning 169, 170, 173
Strafford 171, 173
Strange 81
Stücheli 180
Sudeten 230
Sullivan 103
Sun Tzu 34, 69, 118, 119
Surinam 29
Sweden 56, 141, 145, 147, 148, 150, 155, 156, 159-161, 166, 170, 190, 191, 198, 200, 202, 206, 213, 252, 265, 302, 316
Ingermannland 147
Swedish 147, 148, 154, 155, 159, 167, 175, 190

Switzerland 71, 79, 150, 201, 206
Swiss 71, 171
Syria 74, 114, 125, 296, 306
Szur 95

Tabassi 295
Taiwan 60, 62, 79, 237
Tajiks 220
Taliban 70, 124, 220, 303
Tallberg 247, 253, 256, 275, 278-280
Talleyrand 78, 120, 128, 193, 195, 197, 200-204, 209-212, 214
Tauroggen 191
Taylor 207, 216
Teitler 134
Ter-Petrosyan 129
Terris 83
Teutonic 147
Thailand 223
Thatcher 43
Thirty Years' War 144-148, 157, 159, 161, 316
Thomas, D. 93, 248, 249, 268
Thomas, K. 35, 106, 107, 122
Thompson 236
Thomson 258
Thrace 224
Thurn und Taxis, Von 154
Tischer 155, 169
Tolstoy 221
Tonra 268
Torcy 169
Tordesillas 142, 146
Trauttmansdorff, Von 154, 156
Trench 197
Troitskiy 185
Tromp 143
Trumbic 223
Tseng-Tsiang 220, 224
TTE 288-295, 304
Tuchman 211
Turkey 28, 64, 72, 77, 157, 189, 190, 194, 211, 224, 226, 261, 265, 266
Turks 64, 70, 77, 101, 125
Turkic 53, 125
Tuscany 170, 201, 206
Tykocinski 83
Tyrol (South) 228

Ukraine 53, 125, 223, 234, 261
Underdal 35, 36
UNDRO 36
United Nations 11, 30, 36, 38, 40, 43, 54, 70, 74, 81, 82, 84, 85, 86, 104, 105, 129, 131, 132, 134, 148, 188, 200, 220-222, 262, 275, 277, 280, 282, 296, 299, 301, 302, 305, 322, 329, 333

United States 28, 34, 36, 39, 77, 78, 81, 82, 84-6, 93, 104, 108, 114, 123-125, 149, 189, 209, 220-222, 224, 227, 232, 234-237, 239, 240, 245, 263, 291, 296, 298, 300-303, 305, 310, 318
American 12, 29, 33, 35, 38, 41, 77, 113, 176, 213, 220, 222-224, 233, 236, 239, 266, 301, 310
UNSC 36, 43, 74, 84, 85, 105, 129, 188, 200, 220, 275, 277, 280, 282, 302, 322, 329, 370
Ural 292, 294
Ury 39, 40, 94, 98, 250
Utrecht 15, 56, 134, 155, 165-168, 170-181, 188, 190, 209, 210, 213, 316, 317, 320, 322, 324, 337, 343
Uzbeks 220

Vanhoonacker 262
Veenendaal 166, 169-171
Velden, Van der 78
Venice 149, 155-157, 159, 171
Venizelos 224
Versailles 31, 56, 88, 127, 134, 154, 165, 220, 221, 224, 225, 314, 318
Vet, De 145, 147
Vickers 267
Vienna 15, 31, 56, 63, 81, 88, 120, 128, 134, 149, 154, 161, 165, 185-203, 207-216, 220-222, 226, 231, 234, 236, 274, 292, 293, 314, 316-318, 320, 322, 324, 334, 338
Viet Cong 124
Vietnam 28, 60, 77, 104, 108, 124, 236
Vilnius 95
Visé 78
Vitoria 191
Vollaard 141
Voorhoeve 77
Vorontsóv 221
Vries, De 16
Vrijbergen, Van 170
Vroom 142
Vukovic 132

Wallace, H. 245
Wallace, W. 247
Walt 78
Wannis-St John 128
Warntjen 263, 264
Warsaw Pact 82, 85, 86
Warsaw 223
Washington DC 85, 134, 224, 235
Watergate 238
Waterloo 191, 196, 197, 200, 210-212
Weber 171
Webster 187, 203
Weintraub 240
Wellington 191, 196, 197, 210, 214

Wentworth 171
Werts 257
West 86, 223, 325
Western 39, 82, 107, 229, 325
Westerners 33
Westbrook 51, 53
Westphalia 14, 15, 26, 43, 53, 56, 134, 141-151, 157, 160-162, 165, 166, 174, 176, 179, 180, 188, 209, 250, 315, 316, 337
Wicquefort, De 43, 78, 177
Wijk, De 129
WikiLeaks 56
Wilde, De 141, 143
Wilhelm II 225
William I 72, 206, 213
William III 168, 191, 194, 196, 204, 205
Wilson 209, 216, 220, 222, 224-228, 232, 240, 241
Winham 58, 101, 273
World Bank 82
Wright 161
WTO 82, 84, 262, 309
Württemberg 189, 198, 206

Yalta 73, 220, 221, 232-234, 318, 338
Yepes-Enríquez 295
Yorck 191
Young, A. 143, 262
Young, K. 266, 268
Young, O. 83
Young, P. 75
Yugoslavia 73, 86, 96, 200, 213, 223, 228, 234

Zamoyski 185-187, 191-193, 195, 196, 198, 199, 202, 204, 205, 210
Zartman 21, 26, 31, 33, 34, 38, 41, 42, 57-59, 61, 73, 74, 76, 83, 86, 123, 132, 165, 187, 242, 246, 273, 294, 295
Zeeland 145, 152
Zhou Enlai 221, 236, 237, 240, 241, 319, 325
Zichy 196
Zimri-Lim 50
Zionist 223
ZOPA 37, 105, 281, 284
Zwaan, De 259, 266

Synopsis of *Diplomatic Negotiation – Essence and Evolution*

Diplomatic Negotiation is difficult to grasp, both in practice and in theory. Yet it is important to get to grips with this process, as negotiations between states and in international organizations are the lifeblood of the international body politic. The Charter of the United Nations, for obvious reasons, ranks negotiation as the foremost instrument in the peaceful settlement of inter-state conflicts. Scholars of international relations, however, are still searching for methodologies and theories to explain the outcomes of negotiations by the processes that produce them.

This monograph approaches the process of diplomatic negotiation from different angles, while applying a multi-faceted qualitative analysis of case studies from the past and present. It is hoped that a better understanding of negotiation as one of the main tools of diplomacy will help to enhance the effectiveness of this process as an alternative to warfare. Still, negotiation is basically a struggle in the promotion and defence of state interests. It is war by peaceful means.

The central proposition of this book is that negotiations between states can only be a viable replacement of the use of violence if they are conducted within a framework of international regimes that set the rules and procedures for negotiation behaviour and mitigate lack of trust. International regimes may take the shape of international organizations, which can force countries to live up to their agreements. Diplomats and political leaders have come to recognize this, as the evolution of diplomacy in the last 400 years testifies. Diplomatic negotiation may be taken as a ceaseless series of attempts to bring more order to the international system. The current demise of the negotiation processes in the Middle East thus demonstrates the failure of the international community to build overarching negotiation structures.

'This treatise provides a wealth of information about the dynamics of international negotiation. Its overarching strength lies first of all in the historical depth and broad contextual approach, and second in the bridges that were built between practice, research and simulation.'
(Alfred van Staden)

'This book is the culminating experience of a productive life in analyzing and training negotiations, and makes an important contribution to its practical exercise and its informed appreciation.'
(I. William Zartman)